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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,

Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Harrison-Halsted Community Group, Inc. and 280 other individual plaintiffs in the action below, pray that a Writ of Certiorari may issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled cause on November 28, 1962.

OPINIONS BELOW.

The opinion of the Court of Appeals, reported at 310 F. 2d 99 (1962), is reprinted as Appendix A to this Petition. The judgment of the Court of Appeals is reprinted as Appendix B hereto. The opinions of the District Court dismissing respectively the Amended Complaint and the original Complaint are reprinted as Appendices C and D hereto; neither has been officially reported.

JURISDICTION.

The judgment of the Court of Appeals was entered on November 28, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED.

1. May an action be dismissed for want of a substantial federal question when the issues of federal law raised therein have been settled neither by the Supreme Court, nor by the Court of Appeals for the circuit in question, nor (as to most issues) by any other court?

2. Did Congress intend, by the provisions of the Housing Act of 1949 relating to relocation of displaced families, conformity with over-all city plans, and public hearings, to protect those persons who would be displaced by urban renewal projects?

3. Were the other provisions of the Housing Act and regulations thereunder relied on by petitioners in their Amended Complaint intended for the protection of petitioners and others similarly situated?

4. Where petitioners allege that their private legal rights are being invaded by urban renewal projects carried on in violation of the Housing Act and regulations thereunder, have they standing to seek relief in a federal court?

5. Are local public agencies which carry on federally-aided urban renewal projects under an enforceable legal obligation to comply with the requirements of the Housing Act and regulations thereunder?

6. Has the Housing and Home Finance Administrator authority to approve projects not complying with the Housing Act and his own regulations?

7. Have petitioners suffered legal wrong as the result of the actions of the Administrator, and are they adversely affected or aggrieved by said actions, so as to give them standing to secure a judicial review thereof under the Administrative Procedure Act?

8. Does the public hearing requirement of the Housing Act call for a full and fair administrative hearing, and does it require such hearing to be held before the local public agency carrying on the project in question?

9. May an administrative agency constitutionally determine that a particular area is a "slum and blighted area" within the meaning of the applicable statute without affording notice or hearing to the residents and property owners of such area?

10. Is a judicial hearing on the question of slum and blight in an area at the time condemnation proceedings are brought an adequate substitute for a judicially reviewable agency hearing at the time the area is designated?

11. Are the federal courts barred from considering cases involving the exercise by a local agency of a state's power of eminent domain?

12. Does the pendency of condemnation suits involving a small part of an urban renewal area deprive the federal court of jurisdiction of federal questions involving the entire area, as well as areas not involved in said condemnation suits, when said condemnation suits cannot in any case result in the adjudication of all of the claims presented to the federal court?

13. Is the Housing and Home Finance Agency suable?

14. Are the actions of respondents, which petitioners assert to be unlawful, reviewable in any court, at the suit of any person?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Amendment V:

> "No person . . . shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV, Section 1:

> ". . . [N]or shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Administrative Procedure Act, 5 U.S.C. §§ 1000-1009, 60 Stat. 237, as amended. (Relevant excerpts reprinted as Appendix E hereto.)

Housing Act of 1949, Title I, 42 U.S.C. §§ 1441-1462; 63 Stat. 413, as amended. (Relevant excerpts reprinted as Appendix F hereto.)

Illinois Blighted Areas Redevelopment Act, 67½ Ill. Rev. Stat. 1961 §§ 63-91, Laws 1947, p. 1072, as amended. (Relevant excerpts reprinted as Appendix G hereto. Most of the provisions of this Act have been carried over into the Urban Renewal Consolidation Act, *infra*, which is now applicable to the City of Chicago).

Illinois Urban Renewal Consolidation Act, 67½ Ill. Rev. Stat. §§ 91.101-91.136, Laws 1961, p. 3308. (Relevant excerpts reprinted as Appendix H hereto).

STATEMENT OF THE CASE.

Proceedings Below.

This action arose in the United States District Court for the Northern District of Illinois, where plaintiffs (petitioners here) sought a declaratory judgment and injunction to prevent defendant government agencies (respondents here) from proceeding to carry out certain urban renewal projects being federally financed under the Housing Act of 1949. Federal jurisdiction was asserted under 28 U.S.C. § 1331 and under Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009.

Petitioners filed their original Complaint in the District Court on April 20, 1962, approximately one month after they learned of the final administrative approval of the challenged projects by the Housing and Home Finance Administrator (A. 2037).[1] The District Court on respondents' motions dismissed successively the original and the Amended Complaint for lack of jurisdiction (A. 1020). The Court of Appeals affirmed.

Facts Alleged in the Amended Complaint.

Since the trial court heard no evidence and dismissed the Amended Complaint on motion, the facts well pleaded therein must be taken as true for present purposes.

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[1] All references of the form "(A. .....)" are to the Appendix record filed by petitioners in the Court of Appeals. By stipulation and leave of that court, only four copies of the Appendix were filed, consisting of copies of the more important pleadings, motions, and orders in the court below, bound in three volumes with yellow Acco covers. Respondents attached to their Court of Appeals brief a 2-page Supplemental Appendix (referred to as "Supp. A."), listing certain exhibits to one of the motions to dismiss. References to pages of the appendices to this Petition will be in the form "(Appx. .....)".

The Amended Complaint is 94 pages in length, with 242 pages of affidavits and other exhibits attached.[1] Its scope may be judged from its table of contents (A. 2002-05). It sets forth in detail the history and background of the controversy, describes the parties, and in nine separate counts relates the precise respects in which respondents have violated the Housing Act and regulations thereunder and have invaded the legal and constitutional rights of petitioners. Each of these counts is brought by those petitioners particularly affected by the violations alleged therein, suing both individually and on behalf of others similarly situated.

The challenged urban renewal projects involve three adjacent tracts on the Near West Side of Chicago, designated respectively the Harrison-Halsted, Roosevelt-Blue Island, and Congress-Racine Tracts (see map reprinted as Appendix K hereto, Appx. 90a). The first of these project areas was designated in 1956, the other two in 1961. The adjoining area (including at that time almost all of Congress-Racine) was designated in 1956 as the Near West Side Conservation Area.

Petitioners are Harrison-Halsted Community Group, Inc., a not-for-profit corporation set up to protect the interests of the neighborhood, and 280 individuals (A. 2135-47), of whom 104 own property (A. 2105-09), 76 own small businesses (A. 2111-18), and 144 reside (A. 2119-24) in the three challenged project areas (these categories overlap, of course). Some 46 of the 280 individual petitioners fall into none of these categories, but

---

[1] Petitioners were well aware of the requirements of Fed. R. Civ. P. Rule 8; however, the District Court in dismissing their 39-page original Complaint held their allegations insufficiently specific (A. 1014-15), and advised them to attach detailed affidavits to their Amended Complaint.

are in the case either because they own property or reside in the Near West Side Conservation Area (A. 2110, 2125), or because (like many of the other 234) they relied on promises and representations of respondents which later proved false (A. 2127-32).

Respondents are all of the governmental agencies—federal, state, and local—which are involved in carrying on the challenged urban renewal projects.

This controversy arises out of the broken promises of the City of Chicago and its Land Clearance Commission, and out of their disregard for the requirements of the Housing Act. These respondents induced the members of the Near West Side community to cooperate with and support the clearance of the Harrison-Halsted Tract by promising that it would be redeveloped for housing within the economic means of area residents (A. 2025-29, 2044-49). When this tract was largely cleared, the City secretly arranged a change of plan, whereby this and two adjacent tracts were to be turned over to the University of Illinois for its new Chicago campus (A. 2030-31).

To help the University obtain the federal subsidy it required (see Appx. 4a), respondent Land Clearance Commission designated the two adjacent tracts the University desired as "slum and blighted", and resolved to clear them and convey all three to the University (A. 2031-33). The Commission did this, petitioners allege, without according the people of the area any hearing, on the basis of a purely sham investigation, and in disregard of the fact that these tracts are not slums.

The background and history of this controversy are adequately outlined by the Court of Appeals in the first seven pages of its opinion (Appx. 1a-7a). What the opinion does not set forth, however, are the specific viola-

tions by respondents of the Housing Act and regulations thereunder which petitioners have alleged. Without waiving the others, the most important of these violations are as follows:

1. **Relocation Program.** Section 105(c) of the Housing Act [42 U.S.C. § 1455(c)], as amplified and implemented by the HHFA in its regulations (Urban Renewal Manual,[1] Part 16), requires the city to have a working program for relocating families displaced by urban renewal projects into decent, safe, and sanitary dwellings, at rents or prices within their means, reasonably accessible to their jobs, in the same or equally desirable areas.

Count III of the Amended Complaint (A. 2059-64) categorically alleges that Chicago has no such relocation program, and that its actual relocation practices habitually disregard the above-cited requirements, and result (*inter alia*) in a large portion of families being relocated a second, third, and fourth time.

2. **Minority Group Housing and Consultation.** Part 10, Chapter 1 of the Urban Renewal Manual provides:

> "A project which will result in a substantial net reduction in the supply of housing in the project area available to racial minority families may be undertaken only if the following conditions are met:
> (1) Standard housing replacing the loss is provided elsewhere in the community in new or existing

[1] The Urban Renewal Manual is a three-volume looseleaf publication distributed by the HHFA to all local public agencies (including respondent) carrying on federally aided urban renewal programs. The introduction to the Manual commences: "This Manual prescribes the federal requirements applicable to a local public agency (LPA) or other public body, for: (1) an urban renewal project under Title I of the Housing Act of 1949, as amended to date . . ."

dwelling units not previously available to the minority group.

(2) The LPA [local public agency] has afforded representative leadership of the minority group adequate opportunity for consultation during the planning stage. Representative leadership of the minority group means persons accepted as such by the minority community itself, such as persons holding office in civic or other responsible organizations of minority citizens."

Count IV of the Amended Complaint (A. 2064-67) asserts that the challenged projects will destroy housing occupied by minority families, namely Mexicans and Negroes, including a number of petitioners (A. 2133-34); that such housing is not in fact being replaced; and that no opportunity whatever for consultation was afforded to minority group leaders while these projects were in the planning stage.

3. **General City Plan.** Sections 105(a)(iii) and 110(b) of the Housing Act [42 U.S.C. §§ 1455(a)(iii), 1460(b)] require that the plan for an urban renewal area conform to a general plan for the development of the city as a whole.

Count II of the Amended Complaint (A. 2052-58) asserts (1) that Chicago does not now have, and has never had, a general plan complying with these provisions, and (2) that up to and including the time when the challenged projects were approved, such partial and incomplete plans as the city had invariably called for residential, not institutional, use of the area in question.

4. **Public Hearing and Good-Faith Fact-Finding.** Section 105(d) of the Housing Act [42 U.S.C. § 1455(d)] provides that no land for any federally-assisted urban

renewal project "shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing." Sections 110(a) and 110(c)(1) [42 U.S.C. §§ 1460(a), 1460 (c)(1)] confine an urban renewal project to "a slum area or a blighted, deteriorated, or deteriorating area."

Petitioners assert that these provisions (1) require a hearing before the local public agency undertaking the project, here the Chicago Land Clearance Commission; (2) require a full and fair quasi-judicial hearing, at which the agency must make a record supporting its findings of fact and at which affected parties can cross-examine and introduce evidence; and (3) implicitly require an overall good-faith fact-finding procedure by the agency as to the condition of the proposed project area.

Count VII of the Amended Complaint (A. 2080-87) asserts that, as to the Roosevelt-Blue Island and Congress-Racine Tracts, (1) the Land Clearance Commission held no hearing of any kind; (2) no agency held the kind of full and fair hearing referred to above; (3) the Commission engaged in no such good-faith fact-finding procedure, and instead conducted an "investigation" which was a pure sham; and (4) these two tracts are, in fact, not "slum and blighted areas" as defined in the applicable Illinois statute.

Related State Court Proceedings.

Interwoven with the proceedings in this action have been parallel proceedings in the Illinois courts.

Three, two, and one days prior to the filing of the original Complaint in this action—on April 17, 18, and 19, 1962—the Chicago Land Clearance Commission filed the first three of a series of condemnation actions in the Circuit Court of Cook County, covering most of the re-

maining uncleared parcels in the Harrison-Halsted Tract, plus a small portion of the Roosevelt-Blue Island Tract. (No actions have yet been filed covering any part of the Congress-Racine Tract.)

These first three petitions to condemn named as defendants about a dozen of the 280 individual petitioners here. Counsel for petitioners here, on behalf of various of these defendants, filed traverses (the appropriate Illinois pleading) challenging the legality of the takings. These traverses raised, in addition to various issues of Illinois law, all the issues of federal constitutional and statutory law raised by the Amended Complaint here; in fact, copies of the Amended Complaint were attached and incorporated by reference.

The trial court permitted the defendants to produce extrinsic evidence to support their claim that one of the three tracts, Roosevelt-Blue Island, was not in fact a slum and blighted area when the Land Clearance Commission so designated it; however, it denied them discovery as to the Commission's records and employees. It rejected all the other grounds of traverse as a matter of law without hearing evidence, found adversely to the defendants as to the condition of Roosevelt-Blue Island, and entered an order finally overruling all of the traverses.

Appeals were taken from subsequent final judgments by four of the defendants, and were heard by the Illinois Supreme Court on February 1, 1963. These appeals involved questions of purely Illinois law; they also involved (albeit in a different context) substantially all of the issues in this appeal, other than those arising solely out of the federal jurisdictional statutes. The decision of the Illinois Supreme Court is expected at any time.

REASONS FOR GRANTING THE WRIT.

Petitioners will show that the decision of the Court of Appeals herein (a) decides several important questions of federal statutory and constitutional law which have not been, but should be, settled by this Court; (b) decides these questions in a way inconsistent with the rationale of prior decisions of this Court; and (c) decides at least one of these questions in a way directly in conflict with the decision of another Court of Appeals. Petitioners will show also that this is a suitable record on which to review these issues.

I. THIS CASE PRESENTS IMPORTANT ISSUES CONCERNING THE RIGHTS OF INDIVIDUALS AFFECTED BY URBAN RENEWAL, WHICH OUGHT TO BE DECIDED BY THIS COURT.

Urban renewal is a program to rescue our cities from decay. But urban renewal is also a program under which hundreds of thousands of people—usually poor people, often members of minority groups—are forcibly dispossessed of their homes and places of business, so that the land can be cleared and sold to redevelopers, usually private.

This drastic takeover of large areas in our cities from their private owners is justified only because the buildings in these areas have so far deteriorated as to become a public menace. Every court which has upheld the constitutionality of urban renewal has stressed this. Yet even when thus justified, urban renewal unquestionably causes great hardship. Long established communities are destroyed; home owners find that their "just compensation" will not buy a new home; neighborhood businesses are frequently wiped out.

So sweeping a governmental power is subject to grave abuses; it is vital that those affected have an avenue of recourse. If they must endure these hardships, these people have the right to insist that the limitations and safeguards enacted by Congress and by the several state legislatures be strictly observed, so that the urban renewal power be used only for its rightful objects. Because these people are poor, usually socially isolated, and frequently members of minority groups, there is little chance that they can secure redress through economic or political channels. There are obvious limits to the practicality of relying exclusively on the federal Administrator to veto projects which may have powerful local interests behind them. If the courts will not check abuses, therefore, those abuses are likely to go unchecked.

The joint federal-state urban renewal program under Title I of the Housing Act is a giant program, which moreover is just getting under way. Federal expenditures of $4,000,000,000 are authorized [42 U.S.C. § 1453(b)], of which only $667,000,000 had actually been disbursed as of October 31, 1962.[1] As of that date, commitments for projects in the execution stage totalled $1,613,000,000; for projects in the planning stage, $1,260,000,000. Funds had been committed for a total of 1,273 projects in 636 localities scattered throughout the country. All but a handful of states have enacted urban renewal legislation to take advantage of the federal program (see Appendix J, Appx. 73a-88a), and most have projects actively under way. No figures are available as to the number of persons who have been uprooted from their homes and places of business by federally-aided projects, but the number

[1] Statistics from HHFA pamphlet "Urban Renewal Operations, October 1962", extracts from which are reprinted as Appendix I hereto.

must run into the hundreds of thousands, if not millions. From the above statistics, it appears certain many more will be affected in the future than have been in the past.

This Court has so far decided only one urban renewal case, *Berman* v. *Parker*, 348 U.S. 26 (1953). That case settled the legitimacy of urban renewal as an exercise of the police power, and the legitimacy of area rather than building-by-building treatment; it did not reach the issues of standing under the Housing Act and procedural due process which are presented by this case.

As will be seen hereafter, the decisions of the lower courts, both federal and state, are in conflict as to the principal issues raised here. For all of these reasons, the intervention of this Court is urgently required.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS HAVE NO STANDING TO COMPLAIN OF VIOLATIONS OF THE HOUSING ACT.

Title I of the Housing Act is basically a subsidy statute. Under the plan adopted by Congress, the federal government itself carries on no urban renewal projects; Congress chose instead to rely upon local initiative for both the planning and the execution of the program.

Local public agencies investigate and designate blighted areas, select those in which projects will be undertaken, and draw up redevelopment plans. Local governing bodies approve these designations and plans, and certify that the projects cannot be undertaken without federal aid. Each project is then submitted to the Housing and Home Finance Administrator. If the city in question has in effect a "workable program for community improvement" satisfying the requirements of the Housing Act, and if the specific project meets the standards of the Act, the Administrator enters into a contract by which the federal

government agrees to advance the funds needed to acquire and clear the project area, and ultimately to grant outright two-thirds or more of the "net project cost", representing the difference between the total project cost and the price received on resale to the redeveloper. Execution of the project is in the hands of the local agency, but is constantly supervised by the HHFA.

In these respects, the urban renewal program resembles many other federal grant-in-aid programs. However, this program is unique in the extent to which it operates *against* some individuals, even while it benefits others and the public at large. In most federal-aid programs, the benefit element is uppermost, and the detriment falls only on the taxpayers at large. In some programs, it is true—highways, for instance—land condemnation plays an important part; but in these programs it is the use *to which* the land is to be put which is the critical element in the program. Only in urban renewal is the *existing condition* of the land the central consideration. Only urban renewal involves taking land because of a judgment that its present owners are abusing it.

Congress recognized the uniqueness of urban renewal when it set forth in the Housing Act a series of requirements to govern the Title I program as a whole and each individual project thereunder. As might be expected, many of these requirements are fiscal in nature (*e.g.*, interest rates); others embody broad public policies which Congress desired to promote, such as opportunities for private enterprise in redevelopment.

In other provisions of the Act, however, Congress exhibited a concern for, and a desire to protect, those persons who would be adversely affected by the carrying out of urban renewal projects. It is precisely upon these pro-

visions of the Act—and upon similarly motivated provisions of the HHFA's regulations pursuant to the Act—that petitioners based their Amended Complaint.

Thus, the relocation provisions of the Act were patently intended for the protection of persons who would be displaced by clearance projects such as those involved here, rather than merely the public at large, *Gart* v. *Cole*, 263 F.2d 244, 250-1 (C.A. 2, 1959), cert. den. 359 U.S. 958 (1959), so holds; so did the trial court here (Appx. 19a). Similarly, the provisions of the Urban Renewal Manual on minority-group housing and consultation are plainly intended to protect groups who find it especially difficult to secure adequate housing. As to the public-hearing requirement, which was added to the Housing Act by amendment from the floor to both Houses of Congress [95 Cong. Rec. 4864, 8549-50 (1949)], the debate makes clear that the purpose of this provision was to give a measure of protection to "those whose land is going to be taken under this Act and who do not now under any construction under law have a right to come in and be heard." [95 Cong. Rec. 8544 (1949), Rep. Smathers].

That the general plan requirement of the Act was intended, in significant part, for the protection of those living and working in prospective urban renewal areas, is perhaps not so obvious; yet petitioners believe that, upon full argument, they can so demonstrate. Obviously the requirement was intended as a check on hasty, arbitrary, unplanned decisions by local agencies. If this requirement had been enforced here, the losses now being suffered by those who changed their positions in reliance on the original Harrison-Halsted Redevelopment Plan could not have occurred. The Court's attention is called particularly to the economic and social waste involved in the impending destruction of the newly erected parish school

to which many of the parishioners contributed, described by the Court of Appeals in its opinion (Appx. 4a, 7a).

Here, the Court of Appeals, without analyzing either the language or the legislative purpose of the Housing Act provisions cited by petitioners, held that they had no standing to complain of violations of these provisions. If the Court of Appeals was right, then no private person can ever have standing to seek redress in a federal court for violations of the Housing Act's requirements, no matter how plainly Congress intended these requirements for his protection. Neither the congressional intent nor the past decisions of this Court justify such a result.

A. The denial of standing here goes far beyond the Frothingham, Alabama Power, and Tennessee Electric cases.

The Court of Appeals purports to base its denial of standing to petitioners here on *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923), where this Court held that a party has standing to challenge a statute only if "he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

But it is an enormous leap from *Frothingham* to this case. Mrs. Frothingham was challenging a federal appropriation which affected her only as it affected every other federal taxpayer. Here petitioners will lose their properties, homes, and places of business if the challenged projects are allowed to proceed; they are indeed "sustaining some direct injury", not shared by people generally.

This leap, moreover, is not supported by the later decisions of this Court. Thus, in *Alabama Power Co.* v. *Ickes*, 302 U.S. 464 (1938), this Court denied standing to a

private power company to challenge federal subsidies given to competing municipal power companies. Since the plaintiff had no exclusive franchise and therefore no legal right to be free of lawfully conducted competition, it had no standing to question the source of its rivals' funds.[1]

In the similar case of *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118, 137 (1939), this Court held that the test of standing is whether "the right invaded is a legal right—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege."

Here, the Court of Appeals considered only the fourth of these categories, and concluded in effect that the Housing Act is not "a statute which confers a privilege". What it failed to note is that petitioners have pre-existing legal rights falling within the first three categories—rights of owners in their property, rights of tenants in their contractual relationships with their landlords, rights of businessmen in their advantageous relationships with their customers, rights arising out of reliance and estoppel—which will be invaded by the challenged projects.

True, property and related rights are held subject to the lawful exercise of the power of eminent domain by authorized public agencies. But here respondent local agencies are proceeding in flagrant violation of applicable provisions of the Housing Act and regulations thereunder

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[1] This decision explains **Kansas City Power & Light Co. v. MacKay**, 225 F. 2d 924 (C.A. D.C. 1955), cert. den. 350 U.S. 884 (1955), **Taft Hotel Corp. v. HHFA**, 262 F. 2d 307 (C.A. 2 1958), and **Pittsburgh Hotels Association v. Urban Redevelopment Authority**, 202 F. Supp. 486 (D.C. Pa. 1962), all cited by the Court of Appeals here, in all of which competitors were denied standing.

designed for the protection of petitioners and others like them. Under such circumstances, it would be stultifying to characterize respondents' acts as "lawful", or to hold that petitioners' rights must yield despite the illegality.

B. The denial of standing here goes beyond Perkins v. Lukens Steel Co., and conflicts with Gart v. Cole.

In *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940), this Court denied an employer standing to challenge the Secretary of Labor's wage order, holding that no one has a vested legal right to a future government contract, and that the statutory provision in question was not intended to protect employers. Impliedly, the result would have been different had the plaintiff been able to show the statute was intended for his protection.

The importance of congressional intent is pointed up by many other cases. Thus, congressional intent to benefit or protect a particular class may even create new private causes of action for members of the class, as in *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U.S. 33, 39-40 (1916).

The Court of Appeals acknowledged the importance of who Congress intended to protect in its own recent decision in *Daly* v. *Columbia Broadcasting System*, 309 F. 2d 83 (C.A. 7, Adv. 1962), where it carefully analyzed the intent of the Communications Act provision relied on by the plaintiff before denying him standing. When it here failed to discuss the intent of the Housing Act provisions cited by petitioners, and denied them standing despite the clear protective intent of those provisions, the Court of Appeals went far beyond the decisions of this Court.

Its decision here also squarely conflicts with that of the Second Circuit in *Gart* v. *Cole*, 263 F. 2d 244, 250-1 (C.A. 2, 1959), cert. den. 359 U.S. 978 (1959), involving as here

an urban renewal project under the Housing Act. Chief Judge Clark there denied plaintiffs' standing to assert that project land must be disposed of by competitive bidding, since any such requirement would be for the benefit, not of landowners or tenants in the area, but of the federal treasury and the general public. He went on to hold, however, that "plaintiffs do have standing in this action to challenge the Administrator's refusal to grant them an oral hearing on the feasibility of the City's relocation plan." (263 F. 2d at 250) Dealing with plaintiffs' further claim that the Administrator had improperly delegated his duty to review the City's relocation plan, the court said (263 F. 2d at 251):

> "As 42 U.S.C. § 1451(c)(4) is in protection of the interests of displaced residents such as appellants, *they have standing to raise this claim.*" (Emphasis added)

Although petitioners' claims here differ from those in *Gart* v. *Cole* both as to the facts alleged and as to the statutory provisions relied on, the conflict of the two decisions on the standing question is inescapable.

Of the few other urban renewal cases in the federal courts, it cannot be said that the balance favors the Seventh Circuit's view rather than the Second's. As pointed out earlier, plaintiffs denied standing were competitors in *Taft Hotel Corp.* v. *HHFA*, 262 F. 2d 307 (C.A. 2, 1958) and *Pittsburgh Hotels Association* v. *Urban Redevelopment Authority*, 202 F. Supp. 486 (D.C. Pa. 1962). In *Allied-City Wide, Inc.* v. *Cole*, 230 F. 2d 827 (C.A. D.C. 1956), plaintiffs were residents; as here, the court did not specify what provisions of the Act were allegedly violated, except to say that they were "beneficial to the United States." The opinion, a two-paragraph exer-

cise in *ipse dixit*, contributes nothing to the clarification of the issue. On the other hand, standing seems to have been assumed in *Barnes* v. *City of Gadsden*, 268 F. 2d 593 (C.A. 5, 1959), cert. den. 361 U.S. 915, where Negro plaintiffs charged that urban renewal projects were being used to foster segregation. In the very recent *Blackman* v. *Erieview Corp.*, 311 F. 2d 85 (C.A. 6, Adv. 1962), the standing of a local (not federal) taxpayer was upheld.

In view of this evident conflict and confusion, the clarifying intervention of this Court is urgently required.

C. The courts below misinterpreted the Administrative Procedure Act.

Section 10(a) of the Administrative Procedure Act [5 U.S.C. § 1009(a)] affords judicial review to "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute". It is established that the phrase "suffering legal wrong" codifies the test of *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118, 137 (1939), which test, as pointed out earlier, petitioners here meet. It consequently is of lesser importance that the Court of Appeals also misinterprets the phrase "adversely affected or aggrieved", as the legislative history shows. Sen. Doc. No. 248, 79th Cong., 2d Sess. 212, 276 (1946); 3 Davis, *Administrative Law Treatise* § 22.02 (1958).

In denying petitioners standing here, the Court of Appeals notes that the Housing Act does not provide for judicial review of the actions of the Administrator, and compares it in this to the Communications Act, as recently interpreted in *Daly* v. *Columbia Broadcasting System*, 309 F. 2d 83 (C.A. 7, Adv. 1962). However, the Communications Act was enacted before the APA and

the Housing Act afterward. The significance of this distinction was pointed out by this Court in *Brownell* v. *We Shung*, 352 U.S. 180, 185 (1956); *Shaughnessy* v. *Pedreiro*, 349 U.S. 48 (1955); and see *Airline Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 688-9 (C.A.D.C. 1951), cert. den. 342 U.S. 849. In any post-APA statute, "legislative intent to forbid judicial review must be, if not [in] specific . . . terms, at least clear and unmistakable. . . . *The mere fact that Congress had not expressly provided for judicial review would be completely immaterial.*" Sen. Doc. No. 248, 79th Cong., 2d Sess., 368 (1946) (emphasis added). No such clear and unmistakable intent is to be found in the Housing Act.

There exists considerable confusion among the federal courts as to the proper interpretation and application of the APA. Here again, this Court's intervention is needed.

III. THE COURT OF APPEALS ERRED IN REFUSING TO PASS ON PETITIONERS' CLAIM THAT ILLINOIS' REFUSAL TO GRANT THEM AN ADMINISTRATIVE HEARING VIOLATED THE DUE PROCESS CLAUSE.

As the basis for federal-question jurisdiction under 28 U.S.C. § 1331, petitioners in their Amended Complaint (A. 2008, 2081-82, 2084-85) asserted violations not only of the Housing Act but also of their rights to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. The opinion below notes these constitutional claims (Appx. 7a), but does not discuss them further. Near the close of its opinion (Appx. 13a), the Court of Appeals says it will not "speculate that the state courts of Illinois will not protect any rights the plaintiffs may have", and accordingly remits petitioners to the state courts for consideration of their federal due process claims.

If the substance of petitioners' claim were merely that their federal constitutional rights *might* in some unspecified way be violated during the course of the state condemnation proceedings, then the position of the Court of Appeals would be unassailable. This is all that *Georgia* v. *Chattanooga*, 264 U.S. 472 (1924) holds.[1] But that is not the situation here.

A. It is settled law in Illinois to deny a judicially reviewable administrative hearing on the determination whether an area is slum and blighted.

It is petitioners' contention that procedural due process requires a judicially reviewable administrative hearing before an urban renewal agency determines that an area is slum and blighted. Petitioners further contend that the public hearing requirement of the Housing Act [42 U.S.C. § 1455(d)] should be construed in the light of this constitutional requirement, *Bratton* v. *Chandler*, 260 U.S. 110 (1922). The reasons for these contentions will be summarized hereafter.

Illinois, however, takes a different view. Under the Illinois statutes (67-½ Ill. Rev. Stat. 1961 §§ 73, 74, 91.109, 91.110), urban renewal agencies are authorized to make investigations and hold hearings prior to designating slum and blighted areas, but are not required to do so. In *Zurn* v. *City of Chicago*, 389 Ill. 114 (1945), the Illinois Supreme Court held that neither notice nor hearing was constitutionally required. In *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377 (1952),

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[1] The other cases cited by the Court of Appeals on this point, **Amalgamated Clothing Workers v. Richmond Brothers Co.**, 348 U.S. 511 (1955) and **Southern California Petroleum Corp. v. Harper**, 273 F.2d 715 (C.A. 5, 1960), do not deal with condemnations at all; they interpret 28 U.S.C. § 2283, which is irrelevant here because petitioners sought no injunction against any pending state court proceeding.

and *Shapiro* v. *Chicago Land Clearance Commission*, 19 Ill. App.2d 461, 154 N.E.2d 329 (1st Dist. 1958), respectively, it was held that a slum and blighted designation is not judicially reviewable either under the Illinois Administrative Review Act (110 Ill.Rev.Stat. 1961 §§ 264-279), or by common-law certiorari. The language of these cases appears broad enough to eliminate any possibility of litigating the accuracy or legality of a slum and blighted designation prior to condemnation.

In view of these decisions, it was not "speculation" by petitioners to assert that Illinois would deny them—indeed, had denied them—a judicially reviewable administrative hearing. The courts below should have considered petitioners' federal constitutional clams.

B. Procedural due process and fact finding in urban renewal are vital issues requiring this Court's attention.

For the reasons set out in Part I above, procedural regularity is of the utmost importance if grave abuses of the drastic power of urban renewal are to be avoided. Urban renewal agencies, like other agencies of government, are subject to the natural human tendency to expand their powers beyond their proper scope. Without procedural controls, judicially enforced, these agencies will find it all too easy to move into areas which are not truly blighted, but which are desired for other purposes. See *Kaskel* v. *Impelliterri*, 306 N.Y. 73, 115 N.E. 2d 659, 663 (1953) (dissenting opinion). Thus the question of who ultimately decides whether an area is slum and blighted, the definition of that (or a comparable) term, and the procedure by which the decision is arrived at, become the crucial issues in urban renewal.

All but 7 states have urban renewal statutes, and all of these contain some kind of definition of the areas in

which urban renewal is to take place. In this respect, Illinois is typical; 30 of the states have definitions which are substantially similar to its, and 9 more have definitions which are roughly so (see Appendix J hereto). As to the procedure for deciding whether an area is slum and blighted, the statutes diverge more widely; many states require hearings, while others, like Illinois, merely authorize them.

The courts of the various states have been called upon to consider the process by which an area is determined to be slum and blighted in a substantial number of cases. No single line of decision emerges from these cases; it is apparent that the courts have been pulled in opposite directions by conflicting considerations. For the most part, the courts have not sufficiently analyzed the unique features of urban renewal, and have responded to challenges by invoking the doctrine, carried over from the more traditional eminent domain cases, that the courts will not consider the wisdom or expediency of a particular exercise of the power of eminent domain by an authorized executive agency.[1] They have not observed that what is at issue, in the challenge to a slum and blighted designation, is the *existence* of the power in the particular case, not the wisdom of its exercise. Moreover, the courts have been influenced by the complexity of the decision to be made and the need for expert administrative judgment.[2]

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[1] **Cannata v. City of New York**, 11 N.Y.2d 210, 182 N.E. 2d 395 (1962); **Oliver v. City of Clairton**, 374 Pa. 333, 98 A.2d 47 (1953); **Davis v. City of Lubbock**, 160 Tex. 38, 326 S.W.2d 699 (1959); **State ex rel. Dalton v. Land Clearance Authority**, 364 Mo. 974, 270 S.W.2d 44 (1954).

[2] **Gohld Realty Co. v. City of Hartford**, 141 Conn. 135, 104 A.2d 365 (1954); **Opinion to the Governor**, 76 R.I. 249, 69 A.2d 531 (1949).

On the other hand, there is a background of concern—sometimes explicitly stated, sometimes not—for the possibility of abuse, and a recognition of the drastic nature of the power being exercised.[1] In a good many cases the courts have compromised: they have promised to step in to stop serious abuse, yet have not indicated any way an objector could go about demonstrating such abuse.[2] The dilemma this leaves an objector in is pointed up by the present case, where petitioners have categorically alleged that the Chicago Land Clearance Commission's "investigation" of the Roosevelt-Blue Island and Congress-Racine Tracts was a pre-arranged sham, but have never so far been given the opportunity to prove their assertions, either in the federal or in the state courts.

This wholly unsatisfactory state of the law—unsatisfactory from the point of view of protecting the rights of the individual—can only be corrected by this Court.

C. Due process requires a full and fair hearing on the designation of an area as slum and blighted.

The principal defect of the Illinois cases previously cited, and of most of the cases from other states, is their

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[1] **Rubinoff v. District Court,** 145 Colo. 225 (1961) ("Serious harm could result from an arbitrary exercise of the urban renewal power, but wisely used it promises to be the source of great good."); **Housing & Redevelopment Authority v. Minneapolis Metropolitan Co.,** 259 Minn. 7, 104 N.W.2d 864 (1960); **Belovsky v. Redevelopment Authority of Philadelphia,** 357 Pa. 329, 54 A.2d 277 (1947) (dissenting opinion).

[2] **Hunter v. Adams,** 180 Cal. App.2d 511 (1960); **Schenck v. City of Pittsburgh,** 364 Pa. 31, 70 A.2d 612 (1950); **Crommett v. City of Portland,** 150 Me. 217, 107 A.2d 841 (1954); **Despatcher's Cafe v. Somerville Housing Authority,** 332 Mass. 259, 124 N.E.2d 528 (1955); **Bowker v. City of Worcester,** 334 Mass. 422, 136 N.E.2d 213 (1956).

failure to analyze precisely what is involved in the decision of an urban renewal agency, operating under a statute like Illinois', to undertake a blighted area redevelopment project.

The Illinois courts have treated this as if it were a single decision, basically legislative in nature. Now, there are undoubtedly legislative elements in the overall decision, as to which no court would wish to substitute its judgment for that of the authorized agency, except in cases of extreme abuse. These include the preliminary determination of the boundaries of the area;[1] the decision, once the condition of the area has been determined, whether or not to carry on a project there; and the type of redevelopment desired, within the context of the general city plan.

But one important element in the overall decision is not a policy judgment, like those just mentioned, but a judgment concerning matters of fact—whether or not the area in question possesses the physical and social characteristics which the legislature has used to define a slum and blighted area. Some courts, but too few, have recognized this an an essentially factual determination. See, *e.g., Opinion to the Governor*, 76 R.I. 249, 69 A. 2d 531, 536-7 (1949).

More important, the *kind* of facts which go into arriving at this judgment are facts about the particular, limited area under study, not about general city-wide or state-wide conditions. These are "adjudicative facts",

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[1] But see **Gomillion v. Lightfoot**, 364 U.S. 339 (1960); **People ex rel Adamowski v. Village of Streamwood**, 15 Ill. 2d 595, 155 N.E. 2d 635 (1959). Quaere, whether the Congress-Racine Tract (see map, Appx. 90a) may not represent such an abuse.

therefore, rather than "legislative facts", 1 Davis, *Administrative Law Treatise* §§ 7.02-7.04 (1958).

Where an agency must act on the basis of adjudicative facts relating to the affairs and properties of a limited group of persons who will be directly affected by the agency's decision, due process requires a quasi-judicial or "trial" type of hearing, and not simply the legislative or "argument" type of hearing which is appropriate when action is to be based on general legislative facts. This is the teaching of *Morgan* v. *United States*, 298 U.S. 468, 480 (1936), where this Court held that a full and fair quasi-judicial hearing as to the adjudicative facts was required, even though the function in which the Secretary of Agriculture was engaged—rate making—was a legislative function. *St. Joseph's Stockyards Co.* v. *United States*, 298 U.S. 38, 50 (1936).

Within a single field of governmental activity, a quasi-judicial hearing may sometimes be required and sometimes not, depending upon the nature of the facts in dispute upon which governmental action is to be based. Thus, in the field of licensing, contrast *Goldsmith* v. *Board of Tax Appeals*, 270 U.S. 117 (1926) (facts as to an individual's fitness—quasi-judicial hearing required) with *Albert* v. *Public Service Commission*, 120 A. 2d 346 (Md. 1956) (facts concerning whether or not total number of licenses issued should be increased—no hearing required). Similarly, in the field of taxation, compare *Londoner* v. *City and County of Denver*, 210 U.S. 373 (1908) (special assessments based on facts as to individual properties—hearing required) with *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U.S. 441 (1915) (uniform citywide increase in valuations based on general facts—no hearing required).

In the ordinary eminent domain case, the use to which the land is to be put is everything; it is merely fortuitous that one person's property is taken and not another's. In urban renewal, however, the designation of an area as slum and blighted requires the agency to pass a collective judgment on the people of the area—to decide that they have so abused or neglected their property that it has become a public menace. The standards of judgment have been laid down by the legislature, but it is the administrative agency which applies them to the particular area and particular people before it. When made, its judgment forms the basis for agency action which affects the people of the area in the most drastic way possible.

For all these reasons, fundamental fairness requires that, before an urban renewal agency passes judgment on an area and its people by designating it slum and blighted, the agency should accord the people of the area a full and fair administrative hearing, at which the appropriate officials of the agency will produce the evidence upon which the judgment is to be made, and at which the people of the area will have the opportunity to cross-examine and to present countervailing evidence.

D. Judicial hearing at the time of condemnation is not an adequate substitute for judicially reviewable administrative hearing at the time of designation.

The theory of the Illinois cases cited above is that the designation of an area as slum and blighted is not a "taking" and therefore does not affect property rights: consequently, so the Illinois courts hold, no hearing is required until condemnation is begun.

This theory, petitioners submit, ignores the immediate and drastic effects of the "slum and blighted" label on

property in the designated area (A. 2081, 2196). A heavy stigma attaches to all property in the area; markets for property dry up, since no outsider is likely to be interested in investing in brief occupancy and a lawsuit. Since the shadow of condemnation deters even ordinary maintenance, the area goes rapidly downhill; if not a slum before, it soon becomes one. Community organization disintegrates as each family and institution makes its separate plans to depart. The agency begins to acquire buildings, and these rapidly become the plague spots of the neighborhood, pulling down the property of the holdouts. Even when the first condemnation suit is filed, it does not cover the entire area; the owners whose parcels are left until last may have to wait months and even years[1] for the agency to bring suit against them, while their neighborhood gradually becomes a wilderness of rubble. (See *Chicago Housing Authority* v. *Lamar*, 21 Ill. 2d 362, 172 N.E. 2d 799 (1961).)

These same considerations show why the hearing at the time of condemnation is a wholly inadequate substitute for an administrative hearing at the time of designation—so inadequate as to amount to a denial of due process. First, delay alone can irreparably injure the rights of objecting residents. Neither the Illinois statute nor the Illinois courts require that condemnations be begun promptly. The difficulty of proving that an area was not a slum at the time of its designation is certain to increase rapidly as the years pass, while the agency determination helps create the very conditions it purported to describe. Worse, the agency can simply fail to bring condemnation proceedings against the known objectors until it has acquired and wrecked most of the

[1] Here, in the case of the Harrison-Halsted Tract, from September 1956 to April 1962, or 5½ years.

properties in the area, thus effectively destroying the community beyond hope of restoration.

Moreover, the Illinois "wait until condemnation" rule exaggerates the already extreme inequality of parties. A single project may encompass a dozen or more separate condemnation suits, not necessarily simultaneous. To contest the validity of the area's slum and blighted designation, each property owner must file his own traverse and bring forward his own evidence. Even if concurrent traverses are consolidated (as they were in related state court proceedings here, but would not necessarily be in other situations), the burden is far greater than it would be if there were a single administrative hearing followed by judicial review. Also, many affected persons will not be made parties to condemnation actions, and consequently will never be able to challenge the slum and blighted designations in the only way Illinois allows.

Petitioners submit that the Illinois cases cited above, and the apparent concurrence in them by the Court of Appeals, conflict with the rationale of *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951), and *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). In the *Joint Anti-Fascist* case, this Court held that an organization was entitled to a hearing before being placed on the Attorney General's list of subversive organizations, even though the only ostensible result of this listing would be felt in future security proceedings against members of the organization. In the *Ambler Realty* case, this Court held that a property owner had standing to challenge the zoning of his property, even though no enforcement had been undertaken and though he had no plans to make a prohibited use of his property, on the grounds that there was an immediate effect on

its market value. These cases, along with *Morgan* v. *United States*, 298 U.S. 468, 480 (1936), support petitioners' contention that the due process right to a hearing and to judicial redress commences as soon as the administrative action actually affects the individual.

Respondents have contended that petitioners' views, if adopted, would "destroy urban renewal." Petitioners submit that the opposite is the case. All the experience of our history teaches us that great public programs are solidified, not destroyed, when they are forced to observe fair procedures in dealing with the rights and interests of individuals, and where their proceedings are so far subjected to judicial scrutiny as to produce popular confidence that their powers are not being abused.

IV. THE REJECTION OF JURISDICTION HERE CONFLICTS WITH ALLEGHENY v. MASHUDA.

The opinion of the Court of Appeals suggests, as a grounds for rejecting federal jurisdiction, that petitioners can assert their claims under the federal Housing Act and the Fourteenth Amendment in the state-court condemnation proceedings. This conflicts with *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185, 188, 191, reh. den. 361 U.S. 855 (1959), where this Court held that a federal court may not refuse to adjudicate a case otherwise within its jurisdiction simply because the case involved a State's power of eminent domain. *Mashuda* was a diversity rather than a federal-question case, but that does not affect the principal there enunciated.

The decision of the Court of Appeals here is also in conflict with its own recent decision in *Progress Development Corp.* v. *Mitchell*, 286 F. 2d 222, 231-2 (C.A. 7, 1961); and it misapprehends this Court's decision in *Georgia* v.

Chattanooga, 264 U.S. 472 (1924), where this Court disposed of Georgia's contentions *on the merits*.

The fact is that so far the Illinois courts have, at the behest of respondent City of Chicago, refused to consider petitioners' Housing Act claims, on the supposed authority of *City of Chicago* v. *Sanitary District*, 272 Ill. 37 (1916), *Summerfield* v. *City of Chicago*, 197 Ill. 270 (1902), and *C. B. & Q. R.R. Co.* v. *Naperville*, 169 Ill. 25 (1897), and have rejected petitioners' constitutional claims on the authority of *Zara* v. *City of Chicago*, 389 Ill. 114, 59 N.E.2d 18 (1945).

Whether the Illinois Supreme Court will affirm or reverse these holdings is not known at the present time, although it should be very shortly. Until then, respondents are in no position to assert that the Illinois courts will adjudicate petitioners' Housing Act claims or uphold petitioners' due process claims, since they have done everything in their power to prevent it.

V. THE DISMISSAL BELOW CONFLICTS WITH BELL v. HOOD.

The District Court dismissed both the original and the Amended Complaint for want of jurisdiction, not for failure to state a claim on which relief could be granted (Appx. 21a, 34a). Without adverting to the nature of the dismissal, the Court of Appeals affirmed.

In *Bell* v. *Hood*, 327 U.S. 678, 682 (1946), which petitioners cited to the courts below, this Court held that a suit may be dismissed for want of jurisdiction *only* "where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such claim is wholly insubstantial and frivolous." Petitioners

here have put forward a number of extremely serious contentions, including questions of standing, statutory interpretation, and constitutional rights, which have not been settled by any prior decision of this Court—some, indeed, which have not previously been passed on by any court. Dismissal for want of jurisdiction was plain error.

VI. THIS CASE PRESENTS A SUITABLE RECORD ON WHICH THIS COURT COULD REVIEW THE IMPORTANT LEGAL ISSUES RAISED.

Although the Amended Complaint was dismissed on motion, and the court below heard no evidence, this case nevertheless presents an unusually complete record. In dismissing the original Complaint, the District Court put petitioners in the position of having to set forth in much greater detail than is ordinarily required the respects in which they claim the Housing Act and their constitutional rights were being violated. Thus the Court will not be called on to weigh conflicting allegations of fact, yet the factual allegations are sufficiently detailed to illuminate the legal issues presented.

As to the Housing Act issues, no future record is likely to present greater detail, since if the decision below stands, future cases will presumably be likewise dismissed upon motion. This case also presents an unusual range of unresolved issues under the Housing Act. As to the issues of procedural due process, the record here is again unusually clear. The record in the parallel state court proceedings would present more details, but none are essential for the clarification of the fundamental issues.

VII. WHY THE COURT MAY WISH TO DEFER ACTION ON THIS PETITION UNTIL THE ILLINOIS SUPREME COURT DECIDES THE RELATED STATE CASES.

Appeals in the related state cases are now before the Illinois Supreme Court, and a decision is expected at an early date. There are several reasons why this Court might desire to defer action on the present Petition until after the Illinois Supreme Court renders its opinion.

On the one hand, the Illinois court could rule some or all of the disputed projects invalid as a matter of Illinois law, thereby rendering moot some or all of the issues in this action. The Illinois court could also grant other relief which would greatly modify the position of petitioners here. On the other hand, if the Illinois Supreme Court upholds the trial court, this will refute the Court of Appeals' idea (Appx. 13a) that petitioners could obtain a hearing in the Illinois courts on all issues raised in their federal Amended Complaint. No matter how the Illinois court rules, its decision is likely to clarify the law of Illinois on a number of points material here.

The basic issues of this case are the distribution of jurisdiction between federal and state courts, and between court and administrative agency. Should the Illinois Supreme Court decide adversely to petitioners, they intend to file a further petition for certiorari, which will furnish this Court with an even more complete record, permitting examination of every aspect of the problems presented.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Office Supreme Court, U.S.
FILED
FEB 25 1963
JOHN F. DAVIS, CLERK

No. 861

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,

Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

APPENDICIES TO PETITION FOR WRIT OF CERTIORARI.

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APPENDIX A.

Opinion of the Court of Appeals for the Seventh Circuit, rendered November 28, 1962.

(Caption Omitted)

Before DUFFY, SWYGERT and MAJOR, *Circuit Judges.*

DUFFY, *Circuit Judge.* Plaintiffs brought this suit seeking a declaratory judgment and an injunction to prevent defendant Governmental Agencies from proceedings with plans to acquire and clear, under an urban renewal program, an area on the near west side of Chicago, for the use of the University of Illinois. The University desires to use the property as a campus for the University of Illinois—Chicago.

The District Court dismissed, before trial, both the original complaint and the amended complaint. Errors alleged by appellants are the District Court's interpretation of the jurisdictional statutes; its interpretation of the Federal Housing Act; and its interpretation of the allegations of the amended complaint.

All parties to this suit have cooperated in expediting this appeal. By order of this Court, the time for filing briefs was advanced. In spite of the shortened periods, the points at issue were thoroughly covered. Appellants filed a 139 page main brief and a 20 page reply brief. Appellees filed a 75 page brief. The HHFA and the Housing and Finance Administrator also filed a brief. The time for hearing oral argument was likewise advanced so that such argument was held slightly more than four months after the entry of the order of dismissal in the District Court.

This action involves an area of the City of Chicago sometimes called the "Near West Side Neighborhood" which, for the purposes of this case, is divided into four parts. The *Harrison-Halsted Tract* is a square area of some 55.5 acres in the northeast corner of the Neighbor-

hood. Immediately south of it is the *Roosevelt-Blue Island Tract,* occupying some 48.7 acres. Along the north edge of the Neighborhood stretches the *Congress-Racine Tract,* an irregular shaped area one mile in length, averaging 1/10 of a mile in width, and comprising some 59.4 acres. The rest of the Neighborhood is occupied by the *Near West Side Conservation Area.* This Conservation Area originally extended as far north as the Congress Expressway, but in February 1961, its northern quarter was separated and re-designated as the *Congress-Racine Tract.*

Plaintiffs herein include Harrison-Halsted Community Group, Inc., an Illinois not-for-profit corporation. Plaintiffs' brief asserts Harrison-Halsted Community Group, Inc. is the designated representative of all of the individual plaintiffs in protecting their interests and particularly in bringing and prosecuting this action.

There are also 282 individual plaintiffs of whom 104 own property in the areas hereinbefore described. Other plaintiffs own businesses, and 144 of the plaintiffs reside within the area. Other individual plaintiffs named do not belong to any of the foregoing categories, but are listed as parties plaintiff because of their alleged reliance upon past promises and representations of certain of the defendants.

The defendants are all governmental agencies involved in the challenged urban renewal projects. Listed are the federal Housing and Home Finance Agency (HHFA), and its administrator, Robert C. Weaver. Also listed is the Chicago Land Clearance Commission which, until recently, was the agency of the City of Chicago charged with carrying on slum clearance projects in that city.[1] Another defendant is the City of Chicago together with two of its agencies, 1) the Chicago Community Conservation Board[2] and 2) the Chicago Plan Commission.

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[1] On July 25, 1962, the Land Clearance Commission was merged into the City of Chicago's Department of Urban Renewal.

[2] Until this Board merged on January 1, 1962, into the City's Department of Urban Renewal, it was charged with the duty of carrying out community conservation projects in the City of Chicago.

Still another defendant is the Illinois State Housing Board, a state agency charged with approving all urban renewal projects, both clearance and conservation. The final defendant is the University of Illinois for whose benefit the project areas in question are sought to be acquired.

The Near West Side Neighborhood is one of the oldest residential areas in Chicago. Many families have lived there for more than a generation. Residents and property owners in the area realized that portions thereof had deteriorated and were in need of renewal. A Near West Side Planning Board was formed. This was a voluntary civic organization sponsored by Hull House. At least, in part, due to the activities of this Planning Board, the Harrison-Halsted Tract was designated as a slum and blighted area in September 1956. On January 16, 1958, the Land Clearance Commission adopted the Harrison-Halsted Redevelopment Plan which called for the clearance of most of the Tract, and its development as a residential area for moderate income families. The Redevelopment Plan was approved by the City, the State Housing Board and the HHFA. On May 16, 1958, HHFA entered into a loan-and-grant contract with the Land Clearance Commission for the carrying out of the project. By mid-1960, much of the Tract had been cleared.

In May 1956, most of the balance of the Neighborhood, or that part west of the west line of the Harrison-Halsted Tract (with the exception of Jane Addams Homes) was designated as a conservation area to be redeveloped by rehabilitation and spot clearance.

Plaintiffs claim that following the adoption of the Harrison-Halsted Redevelopment Plan, numerous persons including some of the plaintiffs, began acting in reliance thereon. Residents of the Harrison-Halsted Tract and owners of businesses therein, relocated in adjacent areas with the expectation of returning after Harrison-Halsted

had been redeveloped. Plaintiffs claim that property owners refrained from raising objections which they might otherwise have done. Also, that a new parish school, replacing one that had been destroyed for being in the path of the South Expressway, was built in the heart of the Harrison-Halsted Tract upon assurance by City and Land Clearance Commission officials that it would fit in with the redevelopment plan for the area. This school was completed in 1959, but if the plans here challenged are executed, this school building will be demolished. Some of the plaintiffs contributed to the building of the school.

For some years, the University of Illinois had been seeking a location for a new campus to replace its present facilities at Navy Pier.[3] When asked on oral argument why the University itself did not proceed to acquire land by condemnation, counsel answered that the University was unable financially to meet the expense that would be involved by such a procedure. It is without dispute that the proposed land acquisition is being financed in material measure by the grant of federal subsidy funds under the Federal Housing Act of 1949.

Apparently, some time in 1960, the City began to consider the possibility of using the Harrison-Halsted Tract, by then largely cleared, as a nucleus of a university site. Plaintiffs claim this consideration was kept a high-level secret, that no member of the Near West Side community was consulted, and that public officials concerned continued to reiterate their promises of a residential redevelopment as originally planned.

On February 10, 1961, the Mayor of Chicago announced to the press that he had reached an agreement with the University Trustees on a site for a campus. The so-called railroad terminal site was abandoned. Instead, the campus was to occupy the Harrison-Halsted Tract and two

[3] The Illinois General Assembly has expressly authorized the Board of Trustees to establish a Chicago branch of the University (Ill. Rev. Stat. (1961) Ch. 144 § 40 a.)

adjacent areas needed to provide the acreage[4] which the University desired.

Plaintiffs claim the Land Clearance Commission hurriedly surveyed the adjacent Roosevelt-Blue Island and Congress-Racine Tracts. On March 29, 1961, the Land Clearance Commission adopted a series of five resolutions, designating the Roosevelt-Blue Island and Congress-Racine Tracts as slum and blighted areas, and revised its earlier Harrison-Halsted Redevelopment Plan to provide that the entire area (except 3 acres along Morgan Street) should be turned over to the University, and adopting redevelopment plans calling for all of the Roosevelt-Blue Island and about half of the Congress-Racine Tracts to be turned over to the University. The rest of the Congress-Racine Tract and the three acres on Morgan, were designated for University-oriented private housing.

The Land Clearance Commission held no hearings on its resolutions. Following the approval of these resolutions, the Planning and Housing Committee of the Chicago City Council held a hearing on them on April 13, 1961. Objectors were permitted to appear and make statements, but were not permitted to subpoena witnesses or documents, or cross-examine City and Land Clearance officials.

The Chicago City Council adopted ordinances approving the University site project plans of May 22, 1961. The State Housing Board thereafter announced it would hold hearings of its own on the designations of Roosevelt-Blue Island and Congress-Racine Tracts. The Board agreed, upon demand of plaintiffs herein, to allow them to produce witnesses and to cross-examine the witnesses for the City and the Land Clearance Commission.

The hearing by the State Housing Board convened on July 21, 1961. On July 27, after less than two days of testimony and before objectors had an opportunity to present their own evidence, the Board abruptly terminated the hearing. Objectors (plaintiffs herein) petitioned

[4] About 105 acres.

for a rehearing, but the Board announced its approval of the University site project plans and forwarded them to the HHFA for final approval.

The objectors filed briefs with HHFA in an effort to show why the project plans should not be approved, but HHFA and its Administrator held no hearings on these plans. However, on March 21, 1962, the Administrator announced to the press that he had approved the projects and had entered into loan-and-grant contracts.

Certain additional allegations of the complaint will be mentioned. Plaintiffs say that currently there resides in the Harrison-Halsted, Roosevelt-Blue Island and Congress-Racine Tracts, members of two minority groups, Negroes and Mexicans, against whom there is, at the present time, in Chicago, extensive discrimination in housing. That the University site project will force these people out of the area. This loss in minority group housing is not being replaced elsewhere in the community.

Plaintiffs allege that part of the Near West Side Conservation Area which was later designated as the Congress-Racine Tract, constitutes the least deteriorated portion of the Near West Side Conservation Area; that a substantial portion of said Tract is occupied by modern light industrial structures, while most of the remaining part is occupied by perfectly sound residential structures. The plaintiffs complain that the Land Clearance Commission never explained why the earlier determination of the Community Conservation Board that this area was not slum and blighted was incorrect and should be reversed. Plaintiffs allege that neither the Roosevelt-Blue Island nor the Congress-Racine Tract is, in fact, a slum and blighted area, and that the designation as such by defendants greatly reduced the market value of properties located in such Tracts.

Plaintiffs assert the District Court had jurisdiction of this suit on two grounds: 1) federal question jurisdiction under 28 U. S. C. § 1331, and 2) the jurisdiction to review federal agency action under Section 10 of the Administrative Procedure Act.

Plaintiffs argue the amended complaint sets forth in sufficient detail, facts showing the violation by defendants of a series of provisions of the federal Housing Act and the regulations and directives of the Housing and Home Finance Agency (HHFA); also, that the amended complaint adequately alleges plaintiffs are being deprived of their property by defendant governmental agencies without due process of law and without just compensation.

Plaintiffs urge the action of the Housing and Home Finance Administrator, in approving the three project applications at issue, was erroneous and that his action in executing contracts with the Chicago Land Clearance Commission was a final and reviewable agency action. Plaintiffs assert they have standing to raise the foregoing questions of federal law.

On April 17, 1962, the Land Clearance Commission filed its first condemnation suit pertaining to property with which we are here concerned. Three days thereafter, the instant suit was filed.

It is understandable that many of the plaintiffs and others similarly situated feel that there has been a breach of faith by various public officials by reason of the abrupt change in plans from a typically urban renewal plan to the campus project now proposed. The members of the church who saw their school demolished to make way for an expressway, and who built a new school (finished in 1959) on a site selected only after consultation with representatives of some of the defendant governmental agencies, must indeed experience a sense of frustration. To the ears of the plaintiffs, there is a hollow ring to the claim that the campus project is a mere modification of the original development plan when it is considered the campus project involves about three times as much area as the original plan.

Nevertheless, and in spite of the outraged feelings of many people who have interests in this area, we have in mind that questions arising from the taking of property by condemnation for state purposes, are ordinarily mat-

ters for determination by the state courts. The plaintiffs in this case have sought relief in a federal court. Whether they may properly do so depends principally on whether they have a standing to sue and whether a substantial federal question is involved.

We think it is well settled that in a private suit in a federal court, where it is claimed that a substantial federal question is involved, it must clearly appear that defendant's acts constituted the invasion of plaintiffs' private legal rights. *Frothingham* v. *Mellon, Secretary of the Treasury, et al.*, 262 U. S. 447. In the *Frothingham* case, a taxpayer brought a suit to enjoin expenditure of federal funds under a federal subsidy statute. The Court said, page 488: ". . . The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of the enforcement, and not merely that he suffers in some indefinite way in common with people generally."

The federal Housing Act of 1949 is a subsidy statute which provides for federal grants of aid to local governmental units. Both Senate and House Committee reports stated ". . . that every project assisted be a local undertaking, locally planned, locally approved, locally managed and designed to serve local needs." (Senate Report No. 84, 81st Cong., 1st Sess., p. 37.) It is obvious that none of the plaintiffs is or was a party to the subsidy contract.

When a subsidy application is approved by the Administrator of the HHFA, contracts are entered into by the Agency and the local governmental body, here, the Chicago Land Clearance Commission. Congress did provide certain standards to guide the Administrator in the exercise of his discretion. But, such provisions and regulations thereunder do not confer legal rights upon plaintiffs, as individuals, separate from their position as members of the general public.

The Housing Act of 1949 contains no provision for a hearing before the HHFA. It contains no provision for

a judicial review. Very recently, we held the Federal Communications Act of 1934, as amended, which contains no provision for a judicial review, barred the bringing of a private cause of action to recover damages for a violation of that Act. *Lar Daly* v. *Columbia Broadcasting System* (No. 13667), 309 F.2d 83.

Plaintiffs argue that although the Housing Act says nothing about a judicial review, Section 10 of the Administrative Procedure Act (5 U. S. C. § 1009) does so provide.

Section 10(a) of the Act (5 U. S. C. § 1009) (a) provides: "Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof." Subsection (c) refers to ". . . [A]nd every final agency action for which there is no other adequate remedy in any court, shall be subject to judicial review."

Plaintiffs, in effect, argue that Section 10(a) and (c) confers standing upon any one who suffers economic injury as a result of agency action regardless of whether that person's private legal rights are violated. We do not think that this is a permissible interpretation.

The proper interpretation of Section 10 appears in *Kansas City Power and Light Company et al.* v. *McKay*, DC Cir., 225 F. 2d 924. The Court there held that certain electrical utilities did not have standing to attack the validity of a federally operated power program. The Court said, at page 932: "Section 10(a) is for the benefit of 'any person suffering legal wrong', that is, one whose legal rights have been violated. As we have seen, these plaintiffs cannot effectively make such a claim. Nor are we confronted with any relevant statute within the meaning of which the plaintiffs are 'adversely affected or aggrieved.' Plaintiffs-appellants cite and rely on the view expressed in *American President Lines* v. *Federal Maritime Board*, D. C. D. C. 1953, 112 F. Supp. 346, at page 349, which would in effect delete from Section 10(a) the

phrase 'within the meaning of any relevant statute'. That view cannot, of course, be accepted."

This interpretation of Section 10 was followed in two cases involving unsuccessful attempts to review administrative action under the Housing Act of 1949. *Taft Hotel Corporation* v. *Housing & Home Finance Agency, et al.*, D. C. Conn., 162 F. Supp. 538, aff'd 2 Cir., 262 F. 2d 307; *Gart, et al.* v. *Cole, et al.*, S. D. N. Y., 166 F. Supp. 129, aff'd 2 Cir., 263 F. 2d 244.

Other courts, without specific discussion of the Administrative Procedure Act, have dismissed complaints on the ground the plaintiffs had shown no injury to their private rights. *Allied-City Wide Inc., et al.* v. *Cole*, 230 F. 2d 827; *Pittsburgh Hotels Association, Inc.* v. *Urban Redevelopment Authority of Pittsburgh*, W. D. Pa., 202 F. Supp. 486. Each of these decisions concerned the Housing Act of 1949.

We hold plaintiffs herein do not have a right of judicial review of the Agency action herein, pursuant to Section 10 of the Administrative Procedure Act.

Plaintiffs had no objection, in fact, they favored the original slum clearance program. They voiced vigorous objections, however, when the proposed plan for redevelopment of the area was changed from residential and commercial uses to the University of Illinois—Chicago campus project. They argued that their interests and the interests of the community would be better served were the area to be redeveloped for residential and commercial use.

The use to which plaintiffs desired the land to be put is undeniably a lawful public use. But, using the area acquired as a site for the Chicago branch of the University of Illinois is likewise a lawful public use. Courts have consistently denied the standing of citizens to challenge the choice made by public authorities between different and competing public uses. The legislature, through its lawfully created agencies, rather than "interested" citizens, is the guardian of the public needs to be served by

social legislation. *Koehler* v. *Century of Progress*, 354 Ill. 347; *Carstens* v. *City of Wood River*, 344 Ill. 319; and *McPike* v. *Illinois Terminal Railroad Company*, 305 Ill. 298.

Perhaps the leading case on this point is *Berman et al.* v. *Parker et al.*, 348 U. S. 26. In a District of Columbia slum clearance program, plaintiffs were the owners of a department store in the area affected. Plaintiffs claimed their property was in good condition and should not be designated as slum property. Objection was further made that it was planned to put this store in a project under the management of a private agency, and the area was to be redeveloped for private, not public use. Plaintiffs argued their property was being taken from them in violation of two mandates of the Fifth Amendment, to-wit: due process and "nor shall private property be taken for public use without just compensation."

The Supreme Court said, page 33: "We do not sit to determine whether a particular housing project is or is not desirable." Also, "If those who govern the District of Columbia decide that the Nation's Capitol should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

As to the role of the judiciary in such case, the Court said, page 32: "In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia . . . or the States legislating concerning local affairs . . . This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one."

In the instant case, the means chosen by the local authorities are a sale of a substantial portion of the area to the University of Illinois for redevelopment as a university campus, and the employment of private enterprise for redevelopment of the balance for residential use.

There can be no doubt that these are proper public purposes and uses.

Pertinent also is the case of *Zurn* v. *City of Chicago*, 389 Ill. 114. There the Court rejected an attack on the constitutionality of the Illinois Neighborhood Redevelopment Corporation law, a statute quite similar to the Blighted Areas Redevelopment Act. The Illinois Supreme Court said, at page 129: ". . . When such areas have been reclaimed and the redevelopment achieved, the public purpose has been fully accomplished . . . The achievement of the redevelopment of slum and blight areas, as defined in the act, in our opinion constitutes a public use and a public purpose, regardless of the use which may be made of the property after the redevelopment has been achieved." See also, *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310 and *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377.

On the basis of these and other authorities none of the plaintiffs have any private legal or vested interest in the type of public use redevelopment to be conducted in the area after the land has been acquired and the slums have been cleared. We so hold.

Plaintiffs argue the pending condemnation suits in the Illinois state court do not offer to them an adequate forum for the vindication of their rights. One reason presented is that a state court has no jurisdiction of the Housing and Home Finance Agency.

In this connection, we consider the motion of HHFA for dismissal of the suit against it on the ground that it is a nonsuable agency of the United States. We think this view is sound. This agency is an agency of the executive branch of the United States government. In *New Haven Public Schools* v. *General Services Administration*, 7 Cir., 214 F. 2d 592, this Court stated, at page 593: "It is admitted that the two defendants [General Services Administration and Public Housing Administration] dismissed by the District Court are agencies of the executive branch of the United States government. In other words, they

are administrative departments of the government. It has long been established that such agencies are not truly juridical persons but are strictly representatives of the government, who may not be sued in evasion of sovereign immunity."

We have no right or justification to speculate that the state courts of Illinois will not protect any rights the plaintiffs may have. The United States Supreme Court and other federal courts have repeatedly refused to entertain suits in which plaintiffs' personal or private legal rights have not been infringed and could be infringed only by an improper judgment in a condemnation proceeding. *Georgia* v. *Chattanooga*, 264 U. S. 472, 483-4; *Amalgamated Clothing Workers of America, et al.* v. *Richmond Brothers Co.*, 348 U. S. 511, 518-9; *Southern California Petroleum Corporation* v. *Harper*, 5 Cir., 273 F. 2d 715.

In *Shapiro* v. *Chicago Land Clearance Commission*, 19 Ill. App. 2d 461, it was stated at pages 464-5: "The decision of the Commission was merely one of the steps prerequisite to the exercise of the power of eminent domain (*Zurn* v. *City of Chicago*, 389 Ill. 144, 133), in the event of which plaintiffs will have an opportunity to be heard 'on each alleged infringement of their rights' . . ."

Plaintiffs have urged additional reasons why they are entitled to relief in a federal court action. We have considered same and hold them to be without merit.

Defendants likewise suggested additional defenses, but in view of our holdings hereinbefore indicated, we shall not discuss them.

Insofar as a legal controversy is presented, it properly belongs in the Illinois State Courts.

As plaintiffs have failed to establish any standing to sue in this federal court action, and have failed to raise a substantial federal question, the decision of the District Court, dismissing the amended complaint, must be and is

AFFIRMED.

APPENDIX B.

Judgment of the Court of Appeals, entered November 28, 1962.

(Caption omitted)

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the decision of the said District Court dismissing the amended complaint, in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

APPENDIX C.

Memorandum Opinion and Order of the District Court Dismissing the Amended Complaint, entered June 11, 1962.

(Caption omitted)

Preliminary Statement

Before I announce my decision in this matter, let me say to the side of the record in this cause—for it is unnecessary to explain my decision—that this case presents two thoughts basic and fundamental to our Democratic way of life—in serious conflict.

On the one hand, is the movement forward of a great people, in a great city, in the greatest nation on earth. And this movement forward bespeaks the superiority of our concept of our governmental organization over an opposing ideology. It bespeaks the superiority of our technological know-how. It reflects progress on the level of community living at a time when, within a generation, we will be subscribing for commercial flights to the moon. It is the thought of technological progress in urban planning. We can't hold back the ages. We can't stop the wheels of sociological advancement in their track without bringing about the ultimate collapse of civilization. A Giant and Growing City must continually revise itself—must continually wash away its deterioration—must continually replace its worn out garments with new and even more functional ones. What today may be a moment of rest—a treasure reflective of a great past effort—may within the century have to give away to a Moon Port—or a quarter-mile-wide highway to accommodate airborne private vehicles.

In this posture of things, vested interests reflecting past detriments may have to become less immobile and more transitory. Vested interests may have to be more and more impressed with the public's interest.

On the other hand, we have opposing this thought in this case, another concept basic and fundamental to our Democratic way of life. It is that all values in our political organization (even though they be established by technological advance) are worthless if there is lost to all of us collectively—and to each of us individually—any one of those foundation principles upon which our Democratic way of life is built. We often refer to them as Civil Liberties, but whatever the reference, they constitute the guarantee that collectively we shall not become a tyranny against ourselves individually. They certain include the right to fair play from the Government. They include due process of the law. They include the right against being enslaved by others and by our Government. They include the right not to be governed by a government that plays the ignoble part. They certainly include the right not to have our property taken from us without due process of law. And due process of law means that wherever it is necessary that government take our property, government take it only for a use that is public, and that in exchange for it government give us, not more, but never less than its true worth in dollars and cents.

As technological progress may demand more and more a mobile vested interest of the individual—perhaps commensurately, technological progress may have to become proportionally more and more sensitive to this fundamental principle.

These two great thoughts are at issue in this case.

The tragedy to me is—that however I find in this matter—I still will not be able to attend this serious conflict, for to do so would be to deal in philosophy and political theory, and not in law. Under no circumstances may my ruling here reflect my thinking on this conflict of concepts, for at law I can decide only the bland, cold technical matter of whether in the posture of things, the United States District Court may take jurisdiction where the Circuit Court of Cook County is empowered to consider in its condemnation proceedings all of the complaints of these fine citizens. I cannot presume that the Circuit Court will not consider their complaints fairly and without fear or favor.

DECISION

This matter comes on for ruling on defendants' motions to dismiss—plaintiffs having been given leave to file an amended complaint.

The motions to dismiss are based upon the same grounds as were advanced in the motions to dismiss heretofore filed as to the original complaint and allowed, subject to leave granted the plaintiffs to plead over.

One new ground is asserted among the defendants' motions. The Housing and Home Finance Agency moves further to dismiss the amended complaint as to it in that the Court lacks jurisdiction over the person of the Housing and Home Finance Agency as this agency is a non-suable agency of the United States.

Plaintiffs now allege themselves to be a spurious class of several classes—which said sub-classes are true classes. I find this form of pleading not offensive to Rule 23 of the Federal Rule of Criminal Procedure. However, considering the alleged sub-classes in the light of the allega-

tions of the complaint, I find certain of them, for the reasons heretofore advanced in my Decision of May 21, 1962, not to have a standing before this Court because they lack sufficient ascertainable interest upon which to base a claim which, even joined by others, would aggregate in amount the minimum jurisdictional amount of $10,000.

As stated in *Frothingham* v. *Mellon,* 262 U.S. 447, at 487:

> "(Where an interest) is shared with millions of others, (it) is comparatively minute and indeterminable * * * (and) so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity."

To the same effect are a host of other decisions, some of which were listed in my last opinion.

As to the following sub-classes, I find an ascertainable interest that may justify their presence here: B—2a, B—2b, B—2c, B—3a, B—3b, B—3c, B—4a, B—4b, B—4c, B—5, B—7, and B—8. To determine whether these plaintiffs may remain here, it is necessary that we review, count by count, the Amended Complaint in an effort to locate a substantial question of Federal Law. There are nine counts.

Count I charges that the Administrator of the Home and Housing Finance Agency did not have the authority to approve a modification of the original redevelopment plan, when such modification completely changed the proposed redevelopment use of the tract. Count II alleges that this modified plan could not comport with an overall or general municipal development plan, as required by the Federal Act, because the City of Chicago has no general plan. Both of these issues were considered fully in my opinion of May 21, 1962. Full consideration of them

reveals no basis upon which I could now say that either of them raises a substantial Federal question.

Count III as re-alleged here causes some pause. It is that no feasible program of re-location exists which meets the standards set out in 42 USCA 1455(c). This charge does reach an area which would affect the definite interests of the plaintiffs. The City has a program and an agency for carrying it out, but the assertion that its implementation does not meet the standards of the statute is not sufficiently followed through in pleadings to justify jurisdiction here. An analysis of Exhibit F-1, attached to the amended complaint, provides no aid to plaintiffs' charge; and Exhibit F-2 relates to re-location in another urban renewal program, and not to the re-location administered in this area. Further, there is no circumstance presented which shows a futility in seeking relief from this alleged situation, in the condemnation proceedings in the Circuit Court of Cook County.

Count IV presents a new issue. It is that the re-location program will violate Chapter 10-1 of the HHFA Manual, in that Negroes and Mexicans will be moved into already segregated neighborhoods, rather than into unsegregated areas. In addition, the leaders of these ethnic groups were not consulted by any of the agencies in developing this re-development program. I find this general allegation supported only by speculation. We cannot presume that the manual will not be followed. We cannot presume, without more, a bond on the part of the City's administration toward preserving a traditional pattern of segregation in the City. Further, I find that the provisions of the manual are not on the level of binding law. They are advices to the HHFA people and the agencies that work with them. Nor would this particular provision of the

manual be presumed to have the status of law, for it proposes determinations of which the Government must be assumed incapable of making as a matter of law. Such a term, for example, as "leaders of ethnic groups" defies legal definition, and would render even a statute using it unconstitutional.

The issues raised by Counts V and VI are the same as they were in the original complaint. Although they are here more eloquently urged, and are supported by documentation, I find in them no new basis for asserting a substantial Federal question, and the position of the Court as to these issues must be the same.

Similarly, the allegations of Counts VII, VIII and IX are the same issues as were raised in the original complaint, and the Court's position regarding them is unchanged. One point in Count IX, however, is new and impressive. In addition to the complaint that "good will" under Illinois law cannot be considered in determining the "fair market value" in condemnations, the additional charge is made that speedy property deterioration begins upon the announcement of a contemplated taking, and where condemnation values, as traditionally in Chicago, are determined as of the date of the filing of a condemnation proceeding, just compensation will not be allowed. In addition, plaintiffs charge, this type of valuation permits spot taking for the express purpose of forcing speedy depreciation of originally valuable properties before efforts are begun to condemn them. If this situation were true, the conduct of the City would be reprehensible, and in some manner the plaintiffs affected by it should somewhere find relief. These matters, however, can be litigated by the plaintiffs in their condemnation proceedings, and after the filing of the first condemnation petition with

relation to an authorized re-development program, none of the plaintiffs need await a delayed action by the condemning agency.

In conclusion, I reaffirm the position I took on May 21, 1962, with relation to this Amended Complaint. Jurisdiction need not await a so-called exhaustion of state court remedies, but the jurisdiction of the United States District Court will not be exercised where, considering all the circumstances, including the availability of local courts to decide Federal questions, no *substantial* Federal question is presented.

For these reasons and for those heretofore announced in my opinion of May 21, 1962, I find no basis for jurisdiction in this matter. Accordingly, the motions of the defendants to dismiss the Amended Complaint are allowed, and it is ordered that plaintiffs' Amended Complaint and this action are dismissed, all parties to bear their costs.

Enter:

/s/ James B. Parsons
United States District Judge

Date: June 11, 1962

APPENDIX D.

Memorandum Opinion and Order of the District Court Dismissing the Original Complaint, entered May 21, 1962.

(Caption omitted)

This matter arises out of the plans of the City of Chicago and the University of Illinois to use joint federal-state slum clearance and urban renewal programs to obtain a site on the near west side of Chicago for a Chicago campus of the University.

There is an area in Chicago, the boundaries of which roughly may be described as Congress Street on the North, Union Street on the East, Roosevelt Road on the South and Ashland Avenue on the West, which has been populated principally by people of the same or similar ethnic origin. To some extent they have been a sort of community unto themselves, developing "a complex of internal inter-relationships and inter-dependencies". It has been a neighborhood of relatively low income persons exhibiting and generating a strong sense of identity and self awareness. For example, they were aware that the structures in the neighborhood were deteriorating, and that the neighborhood was in need of physical improvement and redevelopment.

Back in 1947, under the leadership of Hull House, a volunteer social welfare institution located in the area, residents of the area established what they called a Near West Side Planning Board. The purpose of this volunteer group was to guide property owners in the neighborhood in a voluntary program of property rehabilitation. It became an active organization, and later sought the interest

of the city government in an official rehabilitation of the community. In overcoming the fears of some of the residents about official rehabilitation under the city government, this planning board assured the residents that the social, ethnic and residential character of the neighborhood would be preserved.

There has been in Chicago since 1946, a general plan for the development of the city, and prior to 1956, this plan included a redevelopment project called the Harrison-Halsted Project, relating to part of this near west side neighborhood. In May of 1956, the Chicago Community Conservation Board, acting under the Illinois Urban Community Conservation Act, designated much of the rest of the area as a Conservation Area, *i.e.*, an area in danger of becoming slum and blighted if a conservation program were not undertaken. In 1960, the Conservation Board approved a plan of conservation for the area. In the meantime, the Harrison-Halsted Project had been approved by the city, the state, and the Federal Housing and Home Finance Agency, and the Chicago Land Clearance Commission had begun acquiring property in the tract by negotiation and condemnation.

During 1960 and early 1961, negotiations were in progress between the City of Chicago and the University of Illinois for a site for the University's proposed Chicago campus. Eventually it was determined that a feasible site would include the tract of the Harrison-Halsted Project and two other tracts in the same neighborhood called the Roosevelt-Blue Island tract and the Congress-Racine tract. Obviously, this meant going beyond the redevelopment of the Harrison-Halsted tract. It meant redeveloping two additional tracts in the area, and, instead of redesigning all three tracts into modern housing and business prop-

erties for the same or similar people of the area, turning almost all of them over to the University of Illinois, an outsider who did not share the common or similar ethnic characterizations of the people of the community. It meant displacing permanently some of the people and businesses of the neighborhood. Apparently, some of the residents of the area resented this change in planning and use.

Public hearings of a type were held on the proposal by the Committee on Planning and Housing of the City Council of the City of Chicago in April, 1961. Subsequently, all city, state and federal agencies involved approved, and on April 17, 1962, the Chicago Land Clearance Commission filed its first condemnation case in the Circuit Court of Cook County to acquire parcels pursuant to this program. Three days later, the plaintiffs, persons claming to represent the residents of this neighborhood, filed this suit in this Court. They asked (1) for a declaration that this latest program is unlawful and void; (2) for temporary and permanent injunctions against the officers of the various governmental agencies working with the project; and (3) for a stay of proceedings in any other court considering the same issues presented here. Plaintiffs thereafter did not come in to request any emergency relief, and nothing happened in the case until May 15, 1962, when the City of Chicago was joined by the other defendants, with notice to the plaintiffs, to move that a three-judge court be convoked to adjudicate whether the conduct of the defendants violates the constitutional rights of the plaintiffs. They also moved, presumably in the alternative, that the plaintiffs' case be dismissed on jurisdictional grounds.

Who the parties are before me is an important matter. The defendants are obvious on the format of the complaint.

They are the City of Chicago and its several planning and developing agencies, the Chicago Plan Commission, the City Community Conservation Board, and the City Land Clearance Commission. They also are the Illinois State Housing Board and the Board of Trustees of the State's University. They also are the Federal Housing Agency and its National Administrator.

Who the plaintiffs are requires some analysis. First, they are a group of people who have organized and filed as a Corporation under the Illinois not-for-profit corporation provisions. In addition, they are some 267 individuals interested for various reasons in what is going on in the neighborhood. All of the plaintiffs sue as a single class, on behalf of themselves and others like situated. Of the 267 individuals, 84 are residents (they do not claim to be property owners), who say that they helped to maintain and develop the neighborhood. Four of them are former owners of property in the area. Ten are businessmen who had formerly owned businesses in this area. Ten are residents, not property owners, who live in structures they claim are to be cleared away in this redevelopment program. Six are property owners whose structures already have been condemned. Eleven are residents (not property owners) who were moved to other parts of the area when the properties in which they lived were condemned under the original plan of 1956, and who now find themselves located in the path of the clearance under the recently revised and expanded plan. Thirty of them are operators of small businesses who rent stores in the area. Eighty-one are tenants in dwelling quarters in the area. And eighteen are persons in or near the neighborhood who made contributions to the fund for the construction of a parochial school in the neighborhood. This

school was completed in 1959. It now faces removal to make room for the University of Illinois. Thirteen of the plaintiffs do not live within the boundaries of the neighborhood, and thirty of them do not live in the portions of the neighborhood to be cleared away.

These people repeat that they bring this action on behalf of a class of which they are members. Besides the description of the class to be found from the description of the plaintiffs, it also is described in their complaint as including:

(1) All persons like situated.

(2) All of the residents, property owners, owners of businesses, and employes of businesses of the Near West Side Neighborhood.

(3) All other citizens, residents and property owners of the City of Chicago, whose personal and property rights have been and will be injured by the action and policies of defendants.

Rule 23 of the Federal Rules of Civil Procedure, 28 USCA, provides in part that:

> "If persons constituting a class are so numerous as to make it impractical to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all, may, on behalf of all, sue * * *, when the character of the right sought to be enforced for * * * the class is
>
> (1) joint, or common, * * *;
>
> (2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or
>
> (3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought."

A suit is not truly a "representative suit" solely because plaintiffs so designate it. It is well settled that in a true class action, brought pursuant to the provisions of Sub-Section (1) of Rule 23, the representatives of the class must be adequate in number and have a joint or common interest which is co-extensive and wholly compatible with the interest of those to be represented, wholly devoid of antagonism, and sufficiently identical to permit any judgment entered upon the merits to be binding upon all of the alleged members of the class without denying any one of them due process of law. *Troup* v. *McCart*, 238 F.2d 289, 294; *Advertising Specialty Nat'l. Assn.* v. *Fed. Trade Comm.*, 238 F.2d 108, 119; *Ky. Home Mut. Life Ins. Co.* v. *Dilling*, 190 F.2d 797, 802; *Knowles* v. *War Damage Corp.*, 171 F.2d 15, 17, cert. denied 336 U.S. 914; *Rank* v. *Krug*, 142 F.Supp. 1; *Pacific Fire Ins. Co.* v. *Reiner*, 45 F.Supp. 703; *Clougherty* v. *James Vernor Co.*, 187 F.2d 288, cert. denied, 342 U.S. 814; *Gray* v. *Reuther*, 201 F.2d 54. For the true class suit is one only in which the parties represented and the plaintiffs represented have an ascertainable mutuality of interest and benefit. *Giordano* v. *Radio Corp. of America*, 183 F.2d 558, 560; *Pentland* v. *Dravo Corp.*, 152 F.2d 851, 852; *Anderson* v. *Abbott*, 61 F.Supp. 888, 902.

In seeking to ascertain an enforceable community of interests and benefits to these plaintiffs, we cannot consider their desire to retain their "complex of internal-interrelationships". No enforceable interest exists on the part of any or all residents of a community or part of a community to maintain undisturbed the ethnic or cultural status quo of a neighborhood, or to prevent intrusion therein by a citizen or corporation not otherwise by law prohibited from entering. The maintenance of such an interest would be against public policy, and violative of

the "privileges and immunities" clause of the Fourteenth Amendment. *Crandall* v. *Nevada*, 73 U.S. 35, 44; *Edwards* v. *California*, 314 U.S. 160, 174; *Shelley* v. *Kraemer*, 334 U.S. 1, 8-23; *Barrows* v. *Jackson*, 346 U.S. 249, 251-260.

Plaintiffs enlarge their group to include persons who gave donations to a school, which school may itself have a claim to be measured in damages? These persons cannot themselves assert their gifts as a basis for a claim, for such claims as such are too remote and are absorbed in the claim of the school. Similarly, in seeking to ascertain an enforceable community of interests, and benefits of these plaintiffs, we cannot consider any generally and undefined injury arising from the general activities and policies of the defendants. And when the plaintiffs enlarge their class to include any citizen, or resident, or property owner, in the whole City of Chicago, who may have been in the past or may be in the future injured by the actions and policies of the defendants, plaintiffs claims are clearly too remote. *Frothingham* v. *Mellon*, 262 U.S. 447, stated at Page 487:

> "(The interest asserted) is shared with millions of others; is comparatively minute and indeterminable * * * (and) so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity."

To the same effect are a host of other decisions. *Alabama* v. *Ickes*, 302 U.S. 464, 478-479; *Tennessee Electric Co.* v. *TVA*, 306 U.S. 118, 143; *Ex parte Twitt*, 302 U.S. 633, 634; *Florida* v. *Mellon*, 273 U.S. 12, 18; *Ala.* v. *Arizona*, 291 U.S. 286, 292.

Further, in seeking to ascertain an enforceable community of interest and benefits of these plaintiffs, we may not include those several persons listed who have com-

pleted their individual transactions with the defendants. They would be estopped from claiming any benefits from the prospective judgment in this case. Members of the class who have adjudicated or settled their interest with the defendants have none remaining under the circumstances to be jointly asserted with the other plaintiffs here. *Rank* v. *Krug*, 142 F.Supp. 1, 159; *Carlsbad Mutual Water Co.* v. *San Luis Rey Development Co.*, 178 P.2d 844, 852-853; *Elston* v. *King County*, 34 P.2d 906, 909-911.

Persons who have no enforceable interests or benefits in the transactions concerned cannot help to define a class to be represented, and a class alleged to include them is ill defined and unascertainable. A "class action" is an action brought in behalf of other persons "similarly situated", and for such persons to be "similarly situated", it must be more than a likelihood that there are such persons so "similarly situated"; rather, the situation must actually exist, and the class must be a reality, and not a mere possibility. *Mitchell* v. *Wright*, 62 F.Supp. 580, 582, reversed on other grounds, 154 F.2d 924, cert. denied, 329 U.S. 733. See also: *Matlaw Corp.* v. *War Damage Corp.*, 164 F.2d 281, 283; *Distelhorst* v. *Day & Zimmerman*, 58 F.Supp. 334, 335.

It is obvious from an analysis of the plaintiffs, that at best 138 of the 267 have possibly ascertainable interests or property rights which might give rise to damages, if offended. They would possibly include the ten resident property owners; the eleven residents who may have to move a second time; the eighty-one tenants in properties which will have to be cleared away; the six property owners whose structures already have been condemned; and the thirty operators of businesses in the area to be cleared.

It appears to me and I so find that, on the basis of the complaint, a true class suit cannot be maintained by the plaintiffs. Their complaint must be dismissed.

It is doubtful, though not necessary to decide here, that plaintiffs could maintain this suit as a spurious class action. It is well settled that a spurious class action can be maintained where, under certain circumstances, there are common questions of law and fact that must be determined with relation to all the members of the class. *Knowles* v. *War Damage Corp.*, 171 F.2d 15, 18, cert. denied, 336 U.S. 14; *Wilson* v. *Beebe*, 99 F.Supp. 418, 419; *Yamamoto* v. *Dulles*, 16 F.R.D. 195, 197-199; *Underwood* v. *Maloney*, 14 F.R.D. 222, 226-227. But the difficulty of this type of class action for this case grows out of the fact that the value of the interests of the various members of the class may not be combined to determine the jurisdictional amount necessary to maintain the action in this Court. The claims of the members of a spurious class action may not be aggregated to confer jurisdiction. *Miller* v. *Woods*, 185 F.2d 499, 500; *Troup* v. *McCart*, 238 F.2d 289, 293; *Brotherhood of R.R. Trainmen* v. *Templeton*, 181 F.2d 527, 533, cert. denied, 340 U.S. 823; *Ames* v. *Chestnut Knolls*, 159 F.Supp. 791, 793; *Tittle* v. *Gen. Motors Corp.*, 80 F.Supp. 333, 334. I observe, since I need not here find, that for the purposes of a spurious class suit, plaintiffs would have to change their complaint to allege as to each person in the representative group the necessary jurisdictional amount of $10,000, and in the absence of such allegations, each made in good faith, this Court would still have no jurisdiction.

Under the circumstances, it is unnecessary for me to attend the issues of defendants' motion for a three-judge court, other than to overrule so much of such motion as,

by use of alternate pleadings, indicates that I might allow the motion before determining in the first instance if this Court has jurisdiction. There is no question about the fact that I must make a preliminary determination as to jurisdiction before I could entertain an application for a three-judge court. *Ex parte Poreshu*, 290 U.S. 30, 31; *Eastern States Petroleum Corp. v. Rogers*, 280 F.2d 611, 615-616.

Finally, and as a further ground for dismissing this complaint, an analysis of the charges convinces me, and I so find, that plaintiffs have not presented for adjudication by this Court a substantial federal question.

The complaint charges that the new redevelopment plan does not conform to the overall plan of the city. However, it is apparent from the allegations and exhibits of the complaint, that there is a plan. The complaint does not show any lack of conformity to that plan, or any manner in which it has not been followed. The general allegation might be sufficient to raise the issue if it were not in conflict with other allegations of the complaint and there were other sustainable complaints to the end that together the question raised could be considered substantial. *Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co.*, 252 U.S. 388, 397; *Regents of N.M. College of Agriculture & Mechanic Arts v. Albuquerque Broadcasting Co.*, 158 F.2d 900, 907; *Hudson Motor Car Co. v. City of Detroit*, 136 F.2d 574, 576.

As to the allegations of inadequate program for relocation, the complaint acknowledges that the city does have a program of relocation, but generally criticizes the manner in which the program is being carried out. Here again the complaint fails to set out any act of impropriety. General unhappiness with what is going on is not a com-

plaint which would sustain a finding that a substantial federal question has been raised. *McCartney* v. *State of W.Va.*, 156 F.2d 739, 741.

Plaintiffs allege failure on the part of the defendants to comply with Section 101(c) of the Federal Housing Act, as amended, 42 USC 1451(c), in that the city's redevelopment plans were drawn up without any citizen participation. There is no such requirement, and there is no "spirit of the law" which could be interpreted as establishing so essentially such a requirement that failure to comply therewith would raise a substantial federal question. Such an alleged "spirit of the law" would likely not be found, for it would be in abrogation of our basic concept of government operating through duly constituted and official institutions of government. Citizens' participation traditionally exists through the elective process. *Rindge Co.* v. *Los Angeles County*, 262 U.S. 700, 708; *Hoffman* v. *Stevens*, 177 F.Supp. 898, 904; *Gart* v. *Cole*, 166 F.Supp. 129, 135.

Plaintiffs allege that Illinois law, as our statutes are interpreted, does not permit full and just compensation, and, in particular, compensation for good will, and therefore will be violative in condemnations of the Fifth and Fourteenth Amendments. The Illinois Redevelopment Act of 1947 relies upon the Act of Illinois Regarding the Right of Eminent Domain, Chap. 47, Sec. 1, *et seq.* The Illinois Redevelopment Act already has been held constitutional by this Court. *Robinette* v. *Chicago Land Clearance*, 115 F.Supp. 669, 672-674.

The Eminent Domain Act provides generally for just compensation, leaving it up to juries to determine amounts not determinable by the state in its corporate capacity. I have been unable to locate any authority for the proposi-

tion that, as a matter of law, good will may not be considered by juries in determining just compensation.

The complaint does not support its allegation that public hearings were not held before approval of the plans. Plaintiffs actually admit the hearings, but say that they were inadequate. Nevertheless, no inadequacies are alleged. A fair hearing would be all that is required. The inadequacy must be such as would be so oppressive as to be repugnant to our fundamental concept of fairness and justice. *Gohld Realty Co.* v. *City of Hartford*, 104 A.2d 365. But even that question is not reached here. The issue involved here is not whether the land to be taken is for a public purpose. The complaint on its face shows that it was. The question of whether this was the purpose might give rise to a right to a public hearing. *Rindge Co.* v. *Los Angeles County*, 262 U.S. 700. But the posture of this case is different. When the intended use is public, the necessity and expediency of the taking may be determined by an agency of the state or local government, and in such mode as the state or local government may designate. These are legislative questions, no matter who may be charged with their decision, and a hearing with relation to them is not essential to due process of law in the sense of the Fourteenth Amendment. *O'Hara* v. *District of Columbia*, 147 F.2d 146, 148; *Bragg* v. *Weaver*, 51 U.S. 57, 58; *Sears* v. *Akron, Ohio*, 246 U.S. 247, 251.

The complaint's allegations on behalf of Hull House and other alleged strong structures in which plaintiffs have no real property interests do not rest upon any statutory provision disobeyed, or upon any conduct that is violative of the rights of the plaintiffs. The allegations appeal to the Court's sensitivities, as also they do with relation to the parochial school involved, but neither the

remote interests, if any, of the plaintiffs in preserving historical landmarks, nor the sympathy of the Court for those who are emotionally involved in an institutional source of community pride, would serve as a basis for this action. *Frothingham* v. *Mellon, supra.*

Similarly, the complaint that Land Clearance did not have authority to convey title at the time the plan was adopted, as well as the complaint that the Federal Housing Administration did not have authority to consent to a modification of the plan under the circumstances, are matters which relate over to the interests of the general public, and, in the absence of any specific injury to the plaintiffs, would affect them only insofar as they are members of the general public. *Frothingham* v. *Mellon, supra.*

None of the complaints alleged, and I so find, raises a substantial question of federal constitutional rights offended. In view of all the foregoing, it is my opinion that the complaint fails to establish jurisdiction in this Court, and should be dismissed. Accordingly, the motions of the defendants for dismissal of the complaint are allowed, and it is so ordered.

Enter:

/s/ James B. Parsons
United States District Judge

Date: May 21, 1962

APPENDIX E.

Administrative Procedure Act, 5 U.S.C. §§ 1000-1009, 60 Stat. 237, as amended (excerpts).

§ 1001. Definitions.

As used in this chapter—

Agency

(a) "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by sections 301—303, 304, 305, 306—309, 310, 311—318, 1881—1884 and 1891—1902 of Appendix to Title 50, and sections 1738 and 1744 of Title 12; sections 1611—1614, 1615—1646, and 981—985 of Appendix to Title 50, and sections 101—125 of Title 41; and sections 1738, 1739, and 1743 of Title 12, and sections 1821—1833 of Appendix to Title 50.

Person and party

(b) "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

• • •

Order and adjudication

(d) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

• • •

Agency proceeding and action

(g) "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act. June 11, 1946, c. 324, § 2, 60 Stat. 237, as amended Aug. 8, 1946, c. 870, Title III, § 302, 60 Stat. 918; Aug. 10, 1946, c. 951, Title VI, § 601, 60 Stat. 993; Mar. 31, 1947, c. 30, § 6(a), 61 Stat. 37; June 30, 1947, c. 163, Title II, § 210, 61 Stat. 201; Mar. 30, 1948, c. 161, Title III, § 301, 62 Stat. 99.

§ 1009. Judicial review of agency action

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

Rights of review

(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

Form and venue of proceeding

(b) The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

Acts reviewable

(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes

of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

• • •

Scope of review

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. June 11, 1946, c. 324, § 10, 60 Stat. 243.

APPENDIX F.

Housing Act of 1949, Title I, 42 U.S.C. §§ 1440-1462, 63 Stat. 413, as amended (excerpts).

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the pro-

duction, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural non-farm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Housing and Home Finance Agency and its constituent agencies, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective here by established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly

of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction. July 15, 1949, c. 338, § 2, 63 Stat. 413.

§ 1451. Local programs—Local responsibilities considered by Administrator in extending financial assistance

(a) In entering into any contract for advances for surveys, plans, and other preliminary work for projects under this subchapter or for grants pursuant to section 1453(d) of this title, the Administrator shall give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization, administration, and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread or recurrence in the community of slums and blighted areas, and (2) encouraging housing cost reductions through the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs.

Encouragement of operations of local public agencies

(b) In the administration of this subchapter, the Administrator shall encourage the operations of such local public agencies as are established on a State, or regional (within a State), or unified metropolitan basis or as are

established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems on a State, or regional (within a State), or unified metropolitan basis. The Administrator shall particularly encourage the utilization of local public agencies established by the States to operate on a statewide basis in behalf of smaller communities within the State which are undertaking or propose to undertake urban renewal programs whenever that arrangement facilitates the undertaking of an urban renewal program by any such community, or provides an effective solution to community development or redevelopment problems in such communities, and is approved by resolution or ordinance of the governing bodies of the affected communities.

Requirements; exceptions; prohibition against delegation of certain functions

(c) No contract shall be entered into for any loan or capital grant under this subchapter, or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed or covered by a contract for annual contributions prior to August 1, 1956, and no mortgage shall be insured, and no commitment to insure a mortgage shall be issued, under section 1715k or section 1715*l* (d) (3) of Title 12, unless (1) there is presented to the Administrator by the locality a workable program for community improvement (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living

environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program, and (2) on the basis of his review of such program, the Administrator determines that such program meets the requirements of this subsection and certifies to the constituent agencies affected that the Federal assistance may be made available in such community: *Provided*, That this sentence shall not apply to the insurance of, or commitment to insure, a mortgage under section 1715k of Title 12, if the mortgaged property is in an area referred to in clause (A) (i) of paragraph (1) of subsection (d) of said section: *And provided further*, That, notwithstanding any other provisions of law which would authorize such delegation or transfer, there shall not be delegated or transferred to any other official (except an officer or employee of the Housing and Home Finance Agency serving as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in that office) the final authority vested in the Administrator (i) to determine whether any such workable program meets the requirements of this subsection, (ii) to make the certification that Federal assistance of the types enumerated in this subsection may be made available in such community, or (iii) to determine that the relocation requirements of section 1455(c) of this title have been met.

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July 15, 1949, c. 338, Title I, § 101, 63 Stat. 414; Aug. 2, 1954, c. 649, Title III, § 303, 68 Stat. 623; Aug. 11, 1955, c. 783, Title I, § 108(a), 69 Stat. 638; Aug. 7, 1956, c. 1029, Title IV, § 402, 70 Stat. 1103; Sept. 23, 1959, Pub.L. 86—372, Title I, § 110(a) (3), (4), Title IV, §§ 401, 417(2), 73 Stat. 659, 670, 677; June 30, 1961, Pub.L. 87—70, Title I, § 101(b), Title III, § 314(a), 75 Stat. 153, 172.

§ 1452. Loans — Temporary and definitive loans; amounts; interest rates; security; repayment

(a) To assist local communities in the elimination of slums and blighted or deteriorated or deteriorating areas, in preventing the spread of slums, blight or deterioration, and in providing maximum opportunity for the redevelopment, rehabilitation, and conservation of such areas by private enterprise, the Administrator may make temporary and definitive loans to local public agencies in accordance with the provisions of this subchapter for the undertaking of urban renewal projects. • • •

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July 15, 1949, c. 338, Title I, § 102, 63 Stat. 414; Aug. 2, 1954, c. 649, Title III, § 304, 68 Stat. 624; Aug. 7, 1956, c. 1029, Title III, §§ 301, 303, 70 Stat. 1097, 1099; Sept. 23, 1959, Pub.L. 86—372, Title IV, §§ 402-404, 73 Stat. 671; June 30, 1961, Pub.L. 87—70, Title III, §§ 302(a), 314(b), 75 Stat. 166, 172.

§ 1453. Grants for urban renewal projects—Authorization; aggregate amount; limitation on grants for individual projects

(a) (1) The Administrator may make capital grants to local public agencies in accordance with the provisions of this subchapter for urban renewal projects: *Provided*,

That the Administrator shall not make any contract for capital grant with respect to a project which consists of open land.

(2) The aggregate of such capital grants with respect to all of the projects of a local public agency (or of two or more public agencies in the same municipality) on which contracts for capital grants have been made under this subchapter shall not exceed the total of—

(A) two-thirds of the aggregate net project costs of all such projects to which neither subparagraph (B) nor subparagraph (C) applies, and

(B) three-fourths of the aggregate net project costs of any of such projects which are located in a municipality having a population of fifty thousand or less (one hundred fifty thousand or less in the case of a municipality situated in an area which, at the time the contract or contracts involved are entered into or at such earlier time as the Administrator may specify in order to avoid hardship, is designated as a redevelopment area under the second sentence of section 2504 (a) of this title) according to the most recent decennial census, and

(C) three-fourths of the aggregate net project costs of any of such projects (not falling within subparagraph (B)) which the Administrator, upon request, may approve on a three-fourths capital grant basis.

(3) A capital grant with respect to any individual project shall not exceed the difference between the net project cost and the local grants-in-aid actually made with respect to the project.

Limitation on aggregate amount of grants; authorization of appropriations; repayment of certain uncollectible loans

(b) The Administrator may, with the approval of the President, contract to make grants under this subchapter aggregating not to exceed $4,000,000,000 • • •.

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July 15, 1949, c. 338, Title I, § 103, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 305, 68 Stat. 625; Aug. 11, 1955, c. 783, Title I, § 106(a), 69 Stat. 637; July 12, 1957, Pub.L. 85—104, Title III, §§ 301, 302(1), 71 Stat. 299; Sept. 23, 1959, Pub.L. 86—372, Title IV, §§ 405, 417(1), 73 Stat. 672, 676; June 30, 1961, Pub.L. 87—70, Title III, §§ 301(a), 303, 75 Stat. 165, 166.

§ 1454. Requirements for local grants-in-aid

Every contract for capital grants under this subchapter shall require local grants-in-aid in connection with the project involved. Such local grants-in-aid, together with the local grants-in-aid to be provided in connection with all other projects of the local public agency (or two or more local public agencies in the same municipality) on which contracts for capital grants have theretofore been made, shall be at least equal to the total of one-third of the aggregate net project costs of such projects undertaken on a two-thirds capital grant basis and one-fourth of the aggregate net project costs of such projects undertaken on a three-fourths capital grant basis.

July 15, 1949, c. 338, Title I, § 104, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 306, 68 Stat. 625; Aug. 7, 1956, c. 1029, Title III, § 306, 70 Stat. 1101; July 12, 1957, Pub.L. 85—104, Title III, § 302(2), 71 Stat. 300; June 30, 1961, Pub.L. 87—70, Title III, § 301(b), 75 Stat. 166.

§ 1455. Requirements for loan or capital grant contracts

Contracts for loans or capital grants shall be made only with a duly authorized local agency and shall require that—

Approval of urban renewal plan

(a) The urban renewal plan for the urban renewal area be approved by the governing body of the locality in which the project is situated, and that such approval include findings by the governing body that (i) the financial aid to be provided in the contract is necessary to enable the project to be undertaken in accordance with the urban renewal plan; (ii) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; (iii) the urban renewal plan conforms to a general plan for the development of the locality as a whole; and (iv) the urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities, as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plan;

* * *

Temporary relocation of families displaced from urban renewal area

(c) There be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and com-

mercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment.

Acquisition of land; public hearings

(d) No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place and purpose of such hearing.

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July 15, 1949, c. 338, Title I, § 105, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 307, 68 Stat. 625; Aug. 7, 1956, c. 1029, Title III, § 302(a) (1), 70 Stat. 1097; Sept. 23, 1959, Pub.L. 86—372, Title IV, §§ 406, 407, 73 Stat. 673; June 30, 1961, Pub.L. 87—70, Title III, § 315, 75 Stat. 172.

§ 1456. Administrator's powers and duties—Appointment of Director; preparation and submission of annual budget; maintenance and audit of accounts

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Specific powers, duties, and liabilities

(c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Administrator, notwithstanding the provisions of any other law, may—

(1) sue and be sued;

• • •

(6) subject to the specific limitations in this subchapter, consent to the modification, with respect to rate of inter-

est, time of payment of any installment of principal or interest, security, amount of capital grant, or any other term, of any contract or agreement to which he is a party or which has been transferred to him pursuant to this subchapter;

(7) include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions (including such covenants, conditions, or provisions as, in the determination of the Administrator, are necessary or desirable to prevent the payment of excessive prices for the acquisition of land in connection with projects assisted under this subchapter) as he may deem necessary to assure that the purposes of this subchapter will be achieved. No provision of this subchapter shall be construed or administered to permit speculation in land holding;

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Relocation payments; contract provisions; definition; amount; amendment of prior contracts

(f) (1) Notwithstanding any other provision of this subchapter, an urban renewal project respecting which a contract for a capital grant is executed under this subchapter may include the making of relocation payments (as defined in paragraph (2)); and such contract shall provide that the capital grant otherwise payable under this subchapter shall be increased by an amount equal to such relocation payments and that no part of the amount of such relocation payments shall be required to be contributed as part of the local grant-in-aid.

(2) As used in this subsection, the term "relocation payments" means payments by a local public agency to individuals, families, business concerns, and nonprofit organizations for their reasonable and necessary moving

expenses and any actual direct losses of property except goodwill or profit (which are incurred on and after August 7, 1956, and for which reimbursement or compensation is not otherwise made) resulting from their displacement from an urban renewal area made necessary by (i) the acquisition of real property by a local public agency or by any other public body, (ii) code enforcement activities undertaken in connection with an urban renewal project, or (iii) a program of voluntary rehabilitation of buildings or other improvements in accordance with an urban renewal plan: *Provided,* That such payments shall not be made after completion of the project or if completion is deferred solely for the purposes of obtaining further relocation payments. Such payments shall be made subject to such rules and regulations as may be prescribed by the Administrator, and shall not exceed $200 in the case of an individual or family, or $3,000 (or, if greater, the total certified actual moving expenses) in the case of a business concern or nonprofit organization. Such rules and regulations may include provisions authorizing payment to individuals and families of fixed amounts (not to exceed $200 in any case) in lieu of their respective reasonable and necessary moving expenses and actual direct losses of property.

(3) Any contract with a local public agency which was executed under this subchapter before August 7, 1956 may be amended to provide for payments under this subsection for expenses and losses incurred on or after such date.

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July 15, 1949, c. 338, Title I, § 106, 63 Stat. 417; June 3, 1952, c. 362, 66 Stat. 98; June 30, 1953, c. 170, § 22, 67 Stat. 127; Aug. 2, 1954, c. 649, Title III, § 308, Title VIII, § 802(e), 68 Stat. 625, 643; Aug. 11, 1955, c. 783,

Title I, § 106(b), 69 Stat. 637; Aug. 7, 1956, c. 1029, Title III, §§ 304, 305, 70 Stat. 1100; July 12, 1957, Pub.L. 85—104, Title III, §§ 303, 304, 71 Stat. 300; Sept. 23, 1959, Pub.L. 86—372; Title IV, §§ 408, 409(a) (1), (b), 410, 417(1), 73 Stat. 673, 674, 676; June 30, 1961, Pub.L. 87—70, Title III, § 304, 75 Stat. 167.

§ 1460. Definitions

The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) "Urban renewal area" means a slum area or a blighted, deteriorated, or deteriorating area in the locality involved which the Administrator approves as appropriate for an urban renewal project.

(b) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan of the locality as a whole and to the workable program referred to in section 1451 of this title and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and (2) shall be sufficiently complete to indicate, to the extent required by the Administrator for the making of loans and grants under this subchapter, such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

(c) "Urban renewal project" or "project" may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. Such undertakings and activities may include—

(1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses: *Provided*, That the requirement in paragraph (a) of this section that the area be a slum area or a blighted, deteriorated or deteriorating area shall not be applicable in the case of an open land project;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this subchapter in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, leasing or retention by the local public agency itself) at its fair

value for uses in accordance with the urban renewal plan or as provided in section 1457 of this title;

(5) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; and

(7) acquisition and repair or rehabilitation for guidance purposes and resale by the local public agency, of structures which are located in the urban renewal area and which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities: *Provided,* That the local public agency shall not acquire for such purposes, in any urban renewal area, structures which contain or will contain more than (A) one hundred dwelling units, or (B) 5 per centum of the total number of dwelling units in such area which, under the urban renewal plan, are to be repaired or rehabilitated, whichever is the lesser.

* * *

(f) "Net project cost" shall mean the difference between the gross project cost and the aggregate of (1) the total sales prices of all land or other property sold, and (2) the total capital values (i) imputed, on a basis approved by the Administrator, to all land or other property leased, and (ii) used as a basis for determining the

amounts to be transferred to the project from other funds of the local public agency to compensate for any land or other property retained by it for use in accordance with the urban renewal plan.

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(h) "Local public agency" means any State, county, municipality or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the project for which assistance is sought. "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(i) "Land" means any real property, including improved or unimproved land, structures, improvements, easements, incorporeal hereditaments, estates, and other rights in land, legal or equitable.

(j) "Administrator" means the Housing and Home Finance Administrator. June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; July 15, 1949, c. 388, Title I, § 110, 63 Stat. 420; June 30, 1953, c. 170, § 24(a), 67 Stat. 127; Aug. 2, 1954, c. 649, Title III, § 311, 68 Stat. 626; Aug. 11, 1955, c. 783, Title I, § 106(c), 69 Stat. 637; Aug. 7, 1956, c. 1029, Title III, §§ 302(a) (2), (b), (c), (d), 70 Stat. 1097; July 12, 1957, Pub. L. 85-104, Title III, §§ 302(3)-(5), 305, 306, 71 Stat. 300, 301; Sept. 23, 1959, Pub. L. 86-372, Title IV, §§ 412-414(a), 415, 416, 417(3), 73 Stat. 675, 677; June 30, 1961, Pub. L. 87-70, Title III, §§ 301(c), 306(b), 307, 308, 314(c), 75 Stat. 166, 168, 172.

§ 1462. Disaster areas; urban renewal assistance; nonapplicability of certain requirements

Where the local government body certifies, and the Administrator finds, that an urban area is in need of re-

development or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe which the President, pursuant to section 1855a(a) of this title, has determined to be a major disaster, the Administrator is authorized to extend financial assistance under this subchapter for an urban renewal project with respect to such area without regard to the following:

(1) the "workable program" requirement in section 1451(c) of this title, except that any contract for temporary loan of capital grant pursuant to this section shall obligate the local public agency to comply with the "workable program" requirement in section 1451(c) of this title by a future date determined to be reasonable by the Administrator and specified in such contract;

(2) the requirements in section 1455(a) (iii) and section 1460(b) (1) of this title that the urban renewal plan conform to a general plan of the locality as a whole and to the workable program referred to in section 1451(c) of this title;

(3) the "relocation" requirements in section 1455(c) of this title: *Provided*, That the Administrator finds that the local public agency has presented a plan for the encouragement, to the maximum extent feasible, of the provision of dwellings suitable for the needs of families displaced by the catastrophe or by redevelopment or rehabilitation activities;

(4) the "public hearing" requirement in section 1455(d) of this title;

(5) the requirements in sections 1452 and 1460 of this title that the urban renewal area be a slum area or a blighted deteriorated, or deteriorating area; and

(6) the requirements in section 1460 of this title with respect to the predominantly residential character or predominantly residential re-use of urban renewal areas.

In the preparation of the urban renewal plan with respect to a project aided under this section, the local public agency shall give due regard to the removal or relocation of dwellings from the site of recurring floods or other recurring catastrophes in the project area. July 15, 1949, c. 338, Title I, § 111, as added Aug. 7, 1956, c. 1029, Title III, § 307(a), 70 Stat. 1101.

APPENDIX G.

Illinois Blighted Areas Redevelopment Act of 1947, 67½ Ill. Rev. Stat. 1961 §§ 63-91, Laws 1947, p. 1072, as amended (excerpts)

§ 64. Legislative finding and declaration

It is hereby found and declared (a) that there exist in many urban communities within this State slum and blighted areas, as defined herein; (b) that such slum and blighted areas, contribute to the development and cause an increase in and spread of disease, crime, infant mortality and juvenile delinquency, and constitute a menace to the health, safety, morals and welfare of the residents of the State; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities and constitute a drain upon the public revenue and continue to impair the efficient, economical and indispensable governmental functions of the municipalities embracing such areas, as well as of the State; and (c) that in order to promote and protect the health, safety, morals and welfare of the public it is necessary to provide for the eradication and elimination of slum and blighted areas and the construction of redevelopment projects thereon, and that the eradication and elimination of such areas and the construction of redevelopment projects financed by private capital, with limited financial assistance from governmental bodies, in the manner provided in this Act are hereby declared to be a public use essential to the public interest.

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It is also found and declared (a) that the development and redevelopment of urban communities is best served by making such slum and blighted areas and blighted vacant areas available for redevelopment for any use for which the land is suited, public or private, by bodies and corporate, public corporations, or other public bodies, or any private interests, and (b) the eradication and elimination of slum and blighted areas and the acquisition of blighted vacant areas and the development or redevelopment thereof by public bodies or private interests for any appropriate use, public or private, consistent with the general plan for the municipality, in the manner provided in this Act, is hereby declared to be a public use essential to the public interest. As amended 1961, Aug. 22, Laws 1961, p. 3800, § 1.

§ 65. Definitions.

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(j) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

§ 73. Commission to be municipal corporation—Powers

A Commission shall be a municipal corporation and shall constitute a body both corporate and politic, exercising public and essential government functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act.[1] It may

[1] Section 63 et seq. of this chapter.

sue and be sued, and have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, deeds and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this Act. In addition it shall have the following powers:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To borrow money, to apply for and accept advances, loans, grants, contributions, gifts, services, or other financial assistance, from the United States of America or any agency or instrumentality thereof, the State, County, Municipality or other public body or from any sources, public or private, for or in aid of any of the purposes of this Act, and to secure the payment of any loans or advances by the issuance of bonds (as hereinafter defined), and by the pledge of any loan, grant, or contribution, or parts thereof, or the contracts therefor, to be received from the United States of America or any agency or instrumentality thereof, and to enter into and carry out contracts in connection therewith; to redeem its bonds at the redemption price established therein or to

purchase them at less than the redemption price, all bonds so redeemed or purchased to be cancelled; provided that in no event shall any bonds issued by the Commission be payable except out of the revenues or funds specifically designated in this Act for such payment. Notwithstanding any other provision of this Act a Commission shall not borrow money from any source other than the United States of America or any agency or instrumentality thereof without obtaining approval of the State Housing Board and the governing body of the municipality. A Commission, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the United States of America or any agency or instrumentality thereof for a redevelopment project, such conditions imposed pursuant to Federal law as the Commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act or with the foregoing proviso; and

(c) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers a Commission may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project as defined herein and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency

of the municipality wholly or partially within its area of operation.

The Commission shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under this Act.

A Land Clearance Commission shall not be limited to one development or redevelopment project, but may have as many projects in process at any one time as it may deem necessary to accomplish the purposes of this Act.

A Commission shall have no power to build or operate housing on any real property acquired pursuant to this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith. 1947, July 2, Laws 1947, p. 1072, § 11; 1949, Aug. 3, Laws 1949, p. 997, § 1; 1955, July 13, Laws 1955, p. 1776, § 1.

§ 74. Public hearings by Commission—Compelling production of evidence—Records of municipality

In making investigations herein authorized the Commission may hold public hearings. Any hearing may be conducted by the Commission or by a committee appointed by it, consisting of one or more members of the Commission, or by an employee or agent specially authorized by the Commission to conduct it. The Commission and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the

production of books and papers pertaining to such investigation!

In case of contumacy or refusal to obey a subpoena issued to any person, the Circuit or Superior Court of the county in which such person resides or has his principal place of business, upon application by the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or before any member, employee or agent thereof designated to conduct such hearing there to produce evidence, if so desired, or there to give testimony touching the matter under investigation and any failure to obey such order of the Court may be punished by said Court as a contempt thereof.

The officials of any city, village or town and the members of any zoning commission shall, when requested so to do by any member of the Commission, make available for inspection by the Commission or by any committee, employee or agent of the Commission, any and all records and data which they may have pertaining to an area which is then being investigated. 1947 July 2, Laws 1947, p. 1072, § 12.

§ 75. Determination that particular blighted area should be acquired—Approval by State Housing Board and governing body

Whenever a Commission determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act,[1] such determination together with an accurate description of the

[1] Sections 63-91 of this chapter.

area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Commission. Such determinations by a Commission may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Land Clearance Commission.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project", according to the determination of the Commission; provided, that any determination made prior to the effective date of this amendatory Act and designated as a "redevelopment project" as required by the provisions of this section in force prior to such effective date shall constitute a determination that the project is a "Slum and Blighted Area Redevelopment Project" and shall not require the adoption of a new or amendatory resolution so declaring the area involved in such determination. A certified copy of such resolution shall be delivered to the State Housing Board and to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated. 1947, July 2, Laws 1947, p. 1072, § 13; 1949, Aug. 3, Laws 1949, p. 997, § 1.

APPENDIX H.

Illinois Urban Renewal Consolidation Act, 67½ Ill. Rev. Stat. 1961 §§ 91.101-91.136, Laws 1961, p. 3308 (excerpts).

§ 91.102 Legislative finding and declaration

It is hereby found and declared (a) that there exist in urban communities within this State with more than 500,000 inhabitants land clearance commissions, created and acting pursuant to the "Blighted Areas Redevelopment Act of 1947," approved July 2, 1947, as amended, and conservation boards, created and acting pursuant to the "Urban Community Conservation Act," approved July 13, 1953, as amended; (b) that the administration of these two closely related programs involving the eradication or prevention of slum and blight areas and the redevelopment of such areas can be accomplished more efficiently by a single instrumentality as an agency of such urban community; (c) that in order to protect the health, safety, morals and welfare of the public by the more efficient administration of programs to aid in the eradication and prevention of slum and blight areas and the redevelopment thereof it is necessary to provide for the creation of a single instrumentality to absorb the functions of land clearance commissions and conservation boards, and to exercise the powers and authority granted by the "Blighted Areas Redevelopment Act of 1947," approved July 2, 1947, as amended, and the "Urban Community Conservation Act," approved July 13, 1953, as amended; and (d) the eradication and redevelopment of slum and blighted areas, the development and redevelopment of blighted vacant areas, the conservation of urban residential areas and the prevention of slums, by a single instrumentality the creation of which is herein authorized, in

the manner provided in this Act, is hereby declared to be a public use essential to the public interest. 1961, Aug. 15, Laws 1961, p. 3308, § 2.

§ 91.103 Definitions

The following terms, wherever used or referred to in this Act shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Department" means a Department of Urban Renewal created pursuant to this Act.

(b) "Government" shall mean the United States of America or any agency or instrumentality thereof authorized to make funds available to local public agencies by way of loans or grants for or in aid of any of the purposes of this Act.

• • •

(i) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

• • •

(m) "Conservation Area" shall mean an area of not less than 40 acres in which the structures in 50% or more of the area are residential, having an average age of 35 years or more. Such an area is not yet a slum or blighted area as defined herein, but such an area, by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and com-

munity facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors, may become such a slum and blighted area.

(n) "Conservation Plan" shall mean the comprehensive program for the physical development and replanning of a "Conservation Area" embodying the steps required to prevent such "Conservation Area" from becoming a slum and blighted area.

• • •

Part I. Slum and Blighted Areas.

§ 91.109 Powers of department

The Department of Urban Renewal, as agent of the municipality, shall have and exercise the following powers with respect to redevelopment projects:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers the Department may investigate into living and housing conditions in its area

of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project as defined herein and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency of the municipality wholly or partially within its area of operation.

The Department shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under this Act.

The Department shall not be limited to one development or redevelopment project, but may have as many projects in process at one time as it may deem necessary to accomplish the purposes of this Act.

A Department shall have no power to build or operate housing on any real property acquired under the provisions of Part I of this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith. 1961, Aug. 15, Laws 1961, p. 3308, § 9.

§ 91.110 Investigations and hearings

In making investigations herein authorized the Department may hold public hearings. Any hearing may be conducted by the Department or by a committee appointed by it, consisting of one or more members of the Depart-

ment, or by an employee or agent specially authorized by the Department to conduct it. The Department and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers pertaining to such investigation. 1961, Aug. 15, Laws 1961, p. 3308, § 10.

§ 91.111 Determination that area constitutes redevelopment project—Resolution—Approval

Whenever the Department determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Department. Such determinations by the Department may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Department.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project," according to the determination of the Department. A certified copy of such resolution shall be delivered to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the governing body of the municipality in which the area is situated. 1961, Aug. 15, Laws 1961, p. 3308, § 11.

APPENDIX I.

Housing and Home Finance Agency, Urban Renewal Administration.

Report of Urban Renewal Operations, October 1962.

Content of Report.

The *Report of Urban Renewal Operations* presents key cumulative and current fiscal year statistics for local activities assisted under Title I of the Housing Act of 1949, as amended.

Table I shows Federal grant authority committed and disbursed under contracts with local public agencies, by type and status of activity. The grants committed provide for: (a) the preparation of Community Renewal Programs, Federal contributions to urban renewal projects, including the first project being delineated in an area for which a General Neighborhood Renewal Plan is under preparation, and carrying out urban renewal demonstrations, (b) payment of specified costs of relocating families, individuals, and business concerns displaced from urban renewal areas (presented with the amounts shown for urban renewal projects), and (c) repayment of uncollectible planning advances made to terminated projects.

Table II shows the number of localities and the projects and other undertakings for which Federal urban renewal grant commitments have been approved, together with data on General Neighborhood Renewal Plans and feasibility surveys.

[The following table combines Tables I and II of the Report]

USE OF GRANT CONTRACT AUTHORITY AS OF OCTOBER 31, 1962 (CUMULATIVE).

	Commitments (in thousands of dollars)		No. of Projects or Contracts	No. of Localities
Total authority		$4,000,000		
Total authority utilized to date		2,892,331		
Different localities with grant reservations			1,273	
Community renewal programs, total		9,462	69	
Completed	—		—	
Under preparation	$ 9,462		69	
Urban renewal projects, total		2,707,626	1,084	
Approved for execution	1,612,691		654	
Completed	45,730		85	
Active	1,566,961		569	
Approved for planning (active)	1,094,935		430	
Applications under preparation within General Neighborhood Renewal Plans		166,202	75	
Demonstration grant contracts, total		3,933	45	
Completed	876		17	
Active	3,057		28	
Terminated planning advances		5,108		
	Disbursements			
Total disbursements to date		$678,087		
Community renewal programs	$ 3,229			
Urban renewal projects	667,258			
Demonstration grant contracts	2,492			
Terminated projects	5,108			

Reporting Definitions and Treatment:

Community Renewal Programs—These are Federally-assisted activities for the development of over-all community programs to (1) identify areas requiring urban renewal treatment, (2) establish generally the type, scope, and scheduling of treatment for each such area, (3) broadly correlate the contemplated urban renewal activity with other community development or capital improvement programs and activities, and (4) determine the allocation of resources needed to carry out required urban renewal undertakings, including the charting of probable sources of financing and timing of availability of funds for the purpose.

Urban Renewal Projects—These are individual urban renewal projects of definite scope approved for detailed planning and execution by a locality. Although separate contracts for Federal assistance are entered into with the Local Public Agency for (1) preparation of the project plans, and (2) physical accomplishment of the planned undertaking, an urban renewal project is a single entity. Data for projects "approved for planning" are transferred to the reporting category "approved for execution" at the time a contract to assist in carrying out the planned urban renewal activity is approved. Likewise, when the execution activity has been completed, and the contract for Federal assistance settled, the data are transferred from the "active" to the "completed" reporting category. All data relating to projects that have been terminated after approval for planning are removed entirely from the "active" reporting category when the contracts for Federal assistance are cancelled. Unrepaid portions of planning advances made under these contracts, if determined to be uncollectible, are reflected in a separate line item of Tables I and I-A as a charge to the urban renewal grant authorization.

Application under Preparation within General Neighborhood Renewal Plans—Grant authorization for the first project expected to be undertaken under a General Neighborhood Renewal Plan (see below) is reserved at the time HHFA approval is given for the preparation of the Plan. When approval is given for the planning of such project, the project and the grant authorization involved are transferred to the reporting category for urban renewal projects. As approval is given for the planning of subsequent projects within a General Neighborhood Renewal Plan, both the project(s) and grant authorization involved are included initially under the reporting category for urban renewal projects. The grant authorization involved for any project covered by a General Neighborhood Renewal Plan prepared without Federal assistance is included in the reporting category for urban renewal projects when such project is initially approved for project planning.

Demonstration Grants—These are Federally-assisted activities for the development, testing, demonstration, and reporting of methods and techniques for the prevention and elimination of slums and urban blight.

General Neighborhood Renewal Plans—Typically these are urban renewal activities assisted by Federal planning advances to conduct surveys and prepare comprehensive plans for renewal of an entire neighborhood where two or more urban renewal projects, to be carried out in stages, are contemplated. A General Neighborhood Renewal Plan may also be prepared without Federal assistance.

Feasibility Surveys—These are Federally-assisted activities to perform surveys and studies to determine whether or not the undertaking of an urban renewal project or projects by the community is feasible. Federal assistance is in the form of advances only.

APPENDIX J.

DIGEST OF STATUTORY DEFINITIONS OF SLUM AND BLIGHT IN STATE URBAN RENEWAL STATUTES

PART I

STATUTES WHICH ARE COMPARABLE TO THE ILLINOIS BLIGHTED AREAS REDEVELOPMENT ACT

Note 1:

This table examines solely the definition of an area which the local urban renewal authorities have power to clear under a slum clearance (in contrast to a conservation) program. The table makes no reference to minimum sizes of areas or the municipal limits in which an authority can operate.

Note 2:

This list does not purport to note all variations from the Illinois form. Some common ones: Many of the statutes have a clause (which would go under Column 4) listing "the existence of conditions which endanger life or property by fire and other causes" (e.g., Ariz. Rev. Stat. §36-1471(2). Although this clause does not exist in the Illinois definition, its presence or absence has not been noted in the other statutory definitions. Another condition not present in the Illinois definition, whose presence or absence has not been noted below, is "lack of open space."

Illinois:

67½ Ill. Rev. Stat. 1961 §65 (j)

Term: Slum and blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors

Requirement that area be conducive to Ill Health, etc.: No such provision
(is or are)

Detrimental to Public Health, Safety, etc.: Are detrimental to the public safety, health, morals or welfare

Alabama:

Ala. Code (Michie 1958), Title 25, Ch. 10, §97(1)

Term: Blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)

Detrimental to Public Health, Safety, etc.: Follows Illinois definition

Arizona:

Ariz. Rev. Stat. 1956, §1471(18)

Term: Slum area
(means any area . . where)

Amount of Buildings: Majority of structures must be residential or area is one where predominance of buildings
(by reason of)

Condition of Buildings: Substantially quivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime,
(is or are)

Detrimental to Public Health Safety, etc.: *and is* detrimental, etc.

Arkansas:

Ark. Stat. (1961 Supp.) §19-7057(1)

Term: Blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health etc.,: No such provision

Detrimental to Public Health, Safety, etc.: *are* detrimental, etc.

California:

Calif. Code Ann., Health & Safety Code, §33041

Term: Blighted area
(means any area . . . where)

Amount of Buildings: Area is "characterized by buildings which are conducive to disease"
(by reason of)

Condition of Buildings: Because of defective design, faulty interior arrangements,

Requirement that area be Conducive to Ill Health, etc.: See Amount of Buildings
(is or are)

Detrimental to Public Health, Safety, etc.: No such provision

Colorado:

Col. Rev. Stat. 1960 Supp., §139-62-3

Term: Slum area
(means any area . . . where)

Amount of Buildings: Predominance of buildings or improvements
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and* detrimental to the public safety, etc.

Delaware:

Del. Code Ann., Title 31, §4501

Term: Slum area
(means any area . . . where)

Amount of Buildings: A predominance of buildings or improvements which
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Lead to disease, etc.
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

Georgia:

Ga. Code Ann., Ch. 69, §69-1119(h)

Term: Slum area
(means any area . . . where)

Amount of Buildings: A predominance of buildings or improvements
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, safety, etc.

Iowa:

Iowa Code Ann. 1962 Supp. §403.17(8)

Term: Slum area
(means any area . . . where)

Amount of Buildings: A predominance of buildings or improvements
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *or* detrimental to the public health, safety, etc.

Kansas:

Stat. Art. 47 § 174760(h)
(means any area . . . where)

Amount of Buildings: Substantial
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Conducive to Ill Health, etc.: Substantially equivalent to Arizona

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public safety, etc.

Maine:

Maine Rev. Stat. 1961, Cum. Supp., Ch. 90B, §20

Term:
(means any area . . . where)

Amount of Buildings: Predominance of buildings
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois
Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)
Detrimental to Public Health, Safety, etc.: *and is* detrimental, etc.

Maryland:
Md. Const., Art. III, §61
Term: Slum area
(means any area . . . where)
Amount of Buildings: Where dwellings predominate which
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois. Dilapidation and obsolescence not included in definition. "Depreciation" is
Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)
Detrimental to Public Health, Safety, etc.: *Are* detrimental to the public health, etc.

Massachusetts:
Mass. Ann. Laws 1957, Ch. 121A, §26J
Term: Sub-standard area
(means any area . . . where)
Amount of Buildings: No amount or proportion stated
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois
Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)
Detrimental to Public Health, Safety, etc.: *Are* detrimental to the public health, etc.

Minnesota:

Minn. Stat. Ann. §462.421(11)

Term: Blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated

Condition of Buildings: Substantially equivalent to Illinois

Conducive to Ill Health, etc.: No such provision

Detrimental to Public Health, Safety, etc.: *Are* detrimental to the public health, etc.

Mississippi:

Miss. Code Ann. 1961 Supp. §7342-18(h)

Term: Slum area
(means any area . . . where)

Amount of Buildings: Predominance of buildings which
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

Missouri:

Mo. Stat. Ann. (Vernon), §99.320(10)

Term: Unsanitary area
(means any area . . . where)

Amount of Buildings: Predominance of buildings
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and* detrimental to the public health, etc.

Nebraska:

Neb. Rev. Stat. 1961, Cum. Supp., §19-2603

Term: Sub-standard area
(means any area . . . where)

Amount of Buildings: Predominance of buildings
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

Nevada:

Nev. Rev. Stat. 1961, §279.190

Term: Slum area
(means any area . . . where)

Amount of Buildings: A predominance of buildings or improvements
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public safety, etc.

New Hampshire:

N. H. Rev. Stat. §205:2

Term: Blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)
Detrimental to Public Health, Safety, etc.: *are* detrimental to the public health, etc.

New Mexico:

N. M. Art. 49, Ch. 14, § 14-49-2(h)
Term: Slum area
(means any area . . . where)
Amount of Buildings: Predominance of buildings which
(by reason of)
Condition of Buildings: Dilapidation . . . or open spaces
Requirement that area be Conducive to Ill Health, etc.: Conducive to ill health
(is or are)
Detrimental to Public Health, Safety, etc.: *is* detrimental to public health, safety, etc.

North Carolina:

N. C. Gen. Stat. (Michie 1952), §160-456(q)
Term: Blighted area
(means any area . . . where)
Amount of Buildings: There is a predominance of buildings and which
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois, but phrase "substantially impairs sound growth of community" is included. Two-thirds of the buildings in the area must contribute to the conditions.
Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)
Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

North Dakota:

N. D. Century Code, §40-58-19

Term: Slum
(means any area . . . where)

Amount of Buildings: Predominance of buildings which
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental, etc.

Oregon:

Ore. Rev. Stat. 1953, §457-101(1)

Term: Blighted areas
(means any area . . . where)

Amount of Buildings: With buildings
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)

Detrimental to Public Health, Safety, etc.: *Are* detrimental, etc.

Rhode Island

R. I. Gen. Laws 1961, §45-31-8(2)

Term: Slum blighted area
(means any area . . . where)

Amount of Buildings:
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and* constitutes a menace to public health, safety, etc.

South Dakota:

S. D. Code (1960 Supp.) §45.3602(10)(a)

Term: Slum area
(means any area . . . where)

Amount of Buildings: Predominance of buildings which
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and are* detrimental to the public health, etc.

Tennessee:

Tenn. Code Ann., §13-813

Term: Blighted area
(means any area . . . where)

Amount of Buildings: Improved areas which
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)

Detrimental to Public Health, Safety, etc.: *are* detrimental to the safety, health, morals or welfare of the community

Texas:

Tex. Stat. Art. 1269l-3, §4(h)

Term: Slum area
(means any area . . . where)

Amount of Buildings: Predominance of structures in a state of
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois
Requirement that area be Conducive to Ill Health, etc.: Which endangers life or property or which is conducive to ill health, etc.
(is or are)
Detrimental to Public Health, Safety, etc.: *and is* thus an area which is detrimental to the public health, etc.

Vermont:

Title 24 (Municipal and County Government) § 3201 (16)
Term: Slum area
(means any area . . . where)
Amount of Buildings: Predominance of buildings
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois
Requirement that area be Conducive to Ill Health, etc.: Substantially follows Arizona definition
(is or are)
Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

Virginia:

Va. Code 1950, §36-3(h)
Term: Slum
(means any area . . . where)
Amount of Buildings: Dwellings predominate which
(by reason of)
Condition of Buildings: Substantially equivalent to Illinois
Requirement that area be Conducive to Ill Health, etc.: No such provision
(is or are)
Detrimental to Public Health, Safety, etc.: *are* detrimental to the safety, health, etc.

West Virginia:

W. Va. Code 1961, Ch. 16, Art. 18, §1409(98)(j)

Term: Slum area
(means any area . . . where)

Amount of Buildings: Predominance of buildings
(by reason of)

Condition of Buildings: Substantially equivalent to Illinois

Requirement that area be Conducive to Ill Health, etc.: Substantially equivalent to Arizona
(is or are)

Detrimental to Public Health, Safety, etc.: *and is* detrimental to the public health, etc.

PART II

URBAN RENEWAL STATUTES ROUGHLY EQUIVALENT TO THE ILLINOIS BLIGHTED AREAS REDEVELOPMENT ACT BUT CONTAINING SIGNIFICANTLY DIFFERENT DEFINITIONS OF SLUM AND BLIGHT

Connecticut:

Conn. Gen. Stat. Ann., Title 8, § 8-125

Term: "Redevelopment Area"
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Area: Deteriorated, substandard . . . *or* detrimental to the safety, health, morals, etc.

Dist. of Columbia:

D. C. Code Ann. 1961, Title 5, § 5-702

Term: Substandard housing
(means any area . . . where)

Amount of Buildings: *Any* dwelling
(by reason of)

Condition of Buildings: Lack of sanitary conditions . . . *is* in the opinion of the Commissioners detrimental to the safety, health, morals, etc.

Kentucky:

Ky. Rev. Stat. 1962, Ch. 99 § 010

Term: Area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Substandard or unsanitary

Michigan:

Mich. Stat. Ann., Ch. 54, § 5.3012

Term: *None*
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Housing conditions which . . . *are* detrimental to the public peace, health, safety, etc.

Montana:

Mont. Rev. Codes, 1961 Supp., Title 11, Ch. 39, § 11-3901 (b)

Term: Blighted area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)

Condition of Buildings: Physical dilapidation, etc.: Conducive to ill health or arrest sound growth *and/or is* detrimental to the public health.

New York:

Art. 15, Gen. Mun. Law, McKinley's Cons. Laws, § 502

Term: Substandard or insanitary area
(means any area . . . where)

Amount of Buildings: No amount or proportion stated
(by reason of)
Condition of Buildings: Slum, blighted, deteriorated or deteriorating area

Oklahoma:

Okla. Stat. Ann. 1959, Title 11, § 1603(g) (For cities over 100,000)
Term: Blighted area
(means any area . . . where)
Amount of Buildings: No amount or proportion stated
(by reason of)
Condition of Buildings: Physical and economic condition is conducive to ill health, etc., *is* detrimental, etc.

Washington:

Ch. 35 (Cities and Towns) § 35.81.010(2)
Term: Blighted area
(means any area . . . where)
Amount of Buildings: No amount or proportion stated
(by reason of)
Condition of Buildings: Substantially physically dilapidated is conducive to ill health, etc., sound growth, or constitutes an economic or social liability *and/or* is detrimental, or constitutes a menace, to public health, etc.

Wisconsin:

Wis. Stat. Ann. 1957, Title 8, § 66.431(4)(e)

Term: Blighted area
(means any area . . . where)

Amount of Buildings: Predominance of buildings
(by reason of)

Condition of Buildings: Conditions endangering life is conducive to ill health, etc. *and is* detrimental to the public health, etc.

PART III

URBAN RENEWAL STATUTES DISSIMILAR TO THE ILLINOIS BLIGHTED AREAS REDEVELOPMENT ACT

Hawaii:

Hawaii Revised Laws, Ch. 143, § 143.2.

Term: "Blighted Area"

Standard: "Social or economic liability"

Indiana:

Ind. Stats. Ann. Ch. 48, § 48-8503(a).

Term: "Blighted Area"

Standard: "Under current conditions has become undesirable or impossible of normal development and occupancy."

New Jersey:

N. J. Stats. Ann. Title 55, Ch. 14E, § 55:14E:21.

Term: "Blighted Area"

Standard: by reason of one of the following conditions is "an economic or social liability:

(a) Physical conditions.

(b) In manufacturing and industrial districts extreme disrepair.

(c) Unimproved vacant land.

Ohio:

Provisions are contained in Ohio Const. Art. 18 Section 3

Pennsylvania:

Pa. Stats. Ann. Title 35, § 1702(a).

Term: "Redevelopment Area"

Standard: "economically or socially undesirable planned uses."

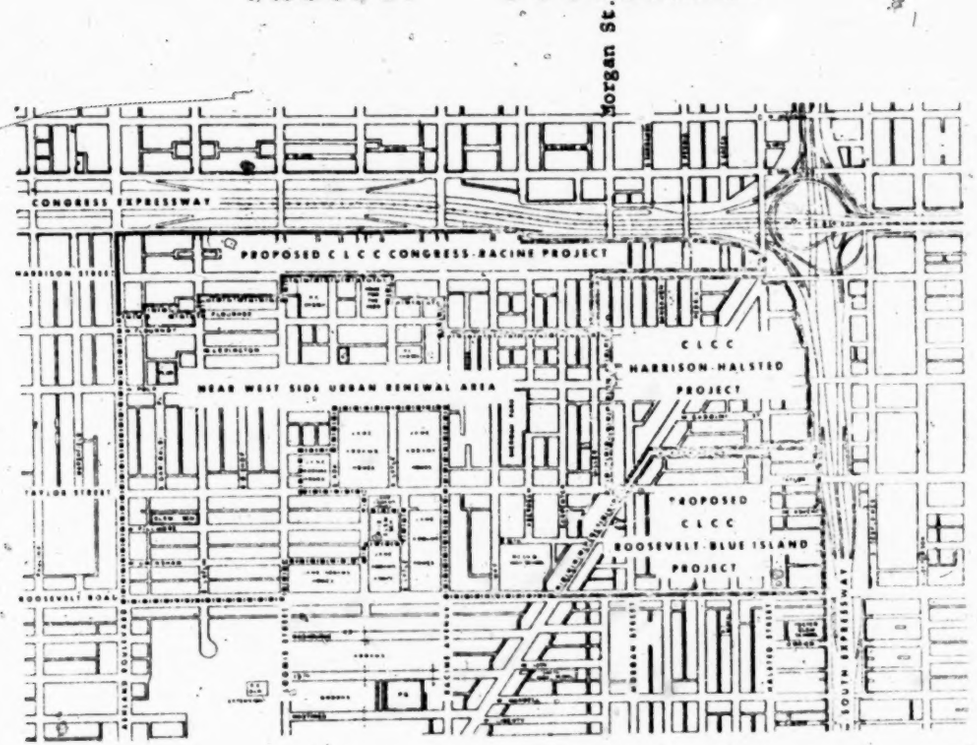
PART IV

STATES WITHOUT GENERAL STATE-WIDE URBAN RENEWAL STATUTES

1. Alaska
2. Florida
3. Idaho
4. Louisiana
5. South Carolina
6. Utah
7. Wyoming

APPENDIX K.

PROJECT BOUNDARIES



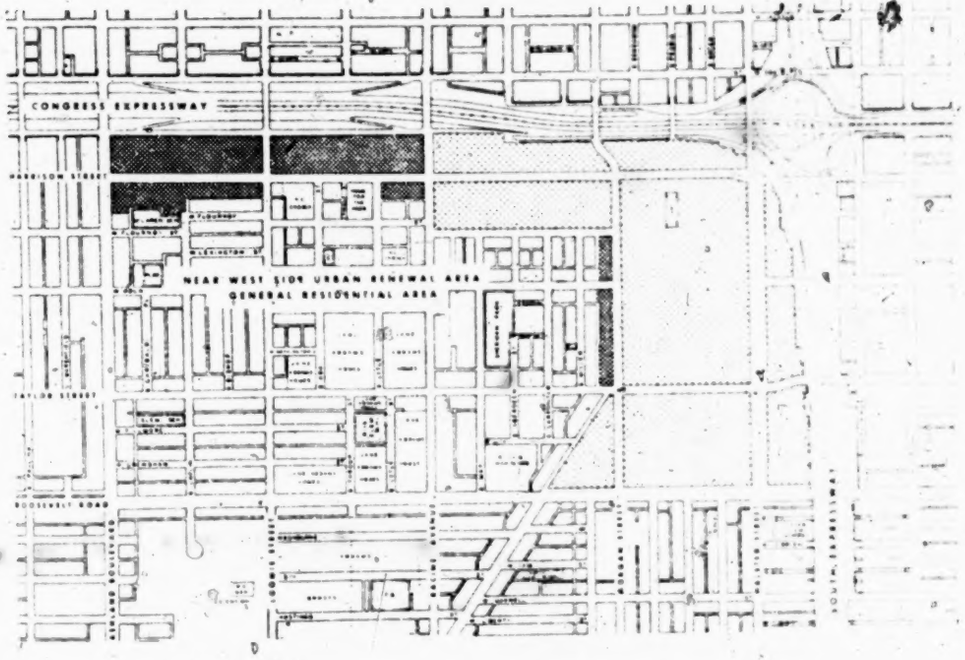
	GROSS AREA	NET AREA
ROOSEVELT-BLUE ISLAND PROJECT	48.7	31.0
HARRISON-HALSTED PROJECT	55.5	35.3
CONGRESS-RACINE PROJECT	59.4	40.9
TOTAL	163.6 ACRES	107.3 ACRES

PREPARED BY DEPARTMENT OF CITY PLANNING
APRIL, 1961

A

APPENDIX L.

PROPOSED REDEVELOPMENT



	CHICAGO CAMPUS UNIVERSITY OF ILLINOIS	105.8
	NEW RESIDENTIAL	27.1
	EXISTING USE TO REMAIN	0.7
	STREETS	30.0
	TOTAL	163.6 ACRES

PREPARED BY DEPARTMENT OF CITY PLANNING
APRIL, 1961

B

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,
Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,
Respondents.

OPPOSITION BRIEF OF RESPONDENTS, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, CITY OF CHICAGO, CHICAGO LAND CLEARANCE COMMISSION, CHICAGO COMMUNITY CONSERVATION BOARD, CHICAGO PLAN COMMISSION, AND ILLINOIS STATE HOUSING BOARD.

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IN THE

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No. 861

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OPPOSITION BRIEF OF RESPONDENTS, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, CITY OF CHICAGO, CHICAGO LAND CLEARANCE COMMISSION, CHICAGO COMMUNITY CONSERVATION BOARD, CHICAGO PLAN COMMISSION, AND ILLINOIS STATE HOUSING BOARD.

To The Honorable, The Chief Justice of the United States, and The Associate Justices of the Supreme Court of the United States:

Respondents pray that the writ of certiorari be denied.

QUESTIONS PRESENTED

Petitioners list fourteen questions as presented by their petition. However, many of them are not argued and may be considered waived. The fact is there are but three basic questions:

1. Do Illinois slum clearance and eminent domain procedures, *i.e.*, those in the related state court actions (Appendix M to Supplement to Petition), deny residents and property owners the due process and just compensation guaranteed them by the 14th Amendment to the United States Constitution?

2. Do the petitioners have standing to complain of alleged violations of the Federal Housing Act in the granting by the Federal Housing and Home Finance Administrator of a subsidy for the local slum clearance project in the area?

3. Do the allegations of petitioners' amended complaint raise a substantial Federal question?

The Court of Appeals was clearly correct in answering these questions in the negative and in affirming the dismissal of the action.

STATEMENT OF THE CASE

Respondents accept petitioners' statement of the facts, solely for purposes of the Court's consideration of the petition, but not petitioners' characterizations and interpretations of the opinions of the Court of Appeals and the Supreme Court of Illinois in these cases. These opinions are discussed at pages 7-11, *infra*.

The Illinois Supreme Court's opinion in the state condemnation cases (Appendix M to Supplement to Petition) demonstrates that the owners of land in the area in question are receiving just compensation for their properties, that they are being afforded a full and fair judicial hearing on the "slum and blighted" designation, and that their rights are being fully protected in the state courts.

On this record, the petition is no more than a request that this Court decide hypothetical and abstract questions which might be presented in some other litigation if, at some future time, rights of residents in some slum clearance area are infringed.

The true thrust of this litigation, as appears from the petition, (p. 7) is that petitioners seek to compel redevelopment of the slum and blighted area in question for residential and commercial rather than University purposes.

REASONS FOR DENYING THE WRIT

Petitioners self servingly declare that the law in the field of urban renewal is in a state of conflict and confusion. Their petition belies their boast but in any event, the important fact here is that it appears from the petition and the supplement thereto that in Illinois eminent domain proceedings property owners are being awarded just compensation for their property*, and that the issue of whether their property is in a slum and blighted area is being fully tried in those proceedings. Accordingly, the petition presents only abstract questions. Petitioners invite this Court to intervene in order to provide what they like to assert is a need for greater symmetry and synthesis in the law.

Actually, there is symmetry in the law in this field. The decisions reflect a remarkable consistency and faithful adherence to the principles set forth in this Court's prior decisions. The decisions of the Court of Appeals and the Supreme Court of Illinois follow these well-established lines of authority and carefully and fully protect all of petitioners' rights.

In *Berman* v. *Parker,* 348 U.S. 26 (1953), this Court unanimously sustained the validity of District of Columbia slum clearance legislation in an opinion which has become the basic authority in the urban renewal field. The Court recognized the social dangers created by slum and blight, and sustained the slum clearance program there

* The opinion of the Illinois Supreme Court (Appendix M to Supplement to Petition, page 94a) states:

> "Thereafter the issues of just compensation were tried, judgments were entered upon the verdicts and the city deposited the amounts of the judgments with the county treasurer. No question is raised in this appeal as to the sufficiency of the awards."

involved as a valid exercise of the police power. The Court specifically held that acquisition and clearance of slum land was in itself a valid public purpose and that the nature of the redevelopment of the cleared land was essentially a legislative determination. Consequently, the fact that some of the cleared land was to be sold to private persons who in turn would carry out the redevelopment plan did not invalidate the clearance project. The Court also emphasized the limited character of permissible judicial review of slum clearance activity, stating:

> "We do not sit to determine whether a particular housing project is or is not desirable . . . If those who govern the District of Columbia decide that the nation's Capitol should be beautiful as well as sanitary there is nothing in the Fifth Amendment that stands in the way." (348 U.S., p. 33)
>
> "In such cases, the legislature, not the judiciary, is the main guardian of the public's interest to be served by social legislation, whether it be the Congress legislating concerning the District of Columbia . . . or the states legislating concerning local affairs. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one." (348 U.S. at p. 32)

Guided by this far-sighted decision, all but a few states have adopted slum clearance legislation. Owners of property in slum clearance areas, whose private interests are at adds with the public purposes of slum clearance, have instituted a large number of suits in many jurisdictions, attacking slum clearance upon every conceivable ground. In virtually all of these actions, the property owners have advanced one or more of the following arguments:

(1) The proposed redevelopment of the slum area after clearance is somehow illegal and this al-

leged illegality has invalidated the slum clearance itself.

(2) The procedures followed by the slum clearance authorities deprived property owners and residents of due process.

(3) The local slum clearance activities are being financed in part by a Federal subsidy and the local authorities have not complied with provisions of the subsidy statute.

Petitioners' arguments fall into one or more of these categories.

The arguments now advanced by petitioners have been advanced by others and have been rejected in virtually all of the more than eighty urban renewal decisions found by respondents (most of which are listed in the annotation which appears at 44 ALR2d 1414 and in the ALR Supplemental Service), on the basis of the principles enunciated in *Berman* v. *Parker, supra*, and the well-established principles of standing to sue enunciated by this Court in *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), and *Tennessee Electric Power Company* v. *T.V.A.*, 306 U.S. 118 (1939), among others. Of this large number of urban renewal decisions, two were appealed to this Court by the property owners. Both appeals were dismissed for want of a substantial Federal question. *Grisanti* v. *City of Cleveland*, 371 U.S. 68 (1962); *Cannata* v. *City of New York*, 371 U.S. 4 (1962).*

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* Petitioners criticize the decision of the New York Court of Appeals in *Cannata* v. *City of New York* (182 N.E. 2d 395 (N.Y. 1962)), arguing that the Court had "not sufficiently analyzed the unique features of urban renewal." (Petition, p. 25) However, petitioners fail to note or comment upon the fact that this Court dismissed the appeal to this Court from the judgment of the New York Court of Appeals for want of a substantial Federal question.

As a result of more than a decade of litigation, the basic principles in the field of slum clearance and urban renewal are well-established. Petitioners seek only to relitigate these settled matters. Consequently, the petition does not state a sufficient basis for the granting of the Court's writ of Certiorari.

The Undisputed Facts Demonstrate That Petitioners' Due Process Rights Have Been Fully Afforded Them.

Petitioners assert broadly that they have not had a fair hearing and that they have been denied due process. These contentions are refuted by the opinion of the Supreme Court of Illinois in the state condemnation cases (Appendix M to Supplement to Petition) and by the undisputed facts.

At the outset it is necessary to correct petitioners' misconstruction of the opinions of the District Court and the Court of Appeals. Petitioners incorrectly state that the Court of Appeals affirmed the dismissal of their suit on the theory that the allegations of their complaint were legally sufficient but should be heard in state court proceedings. Petitioners then argue that the decision of the Supreme Court of Illinois shows that Illinois courts will not consider these issues and consequently undercuts the decision of the Court of Appeals. This argument misinterprets the decisions.

In order to clarify the situation it is necessary to review the facts which existed when the decisions were rendered by the District Court and by the Court of Appeals, respectively. When this matter was before the District Court the state condemnation actions had been filed but had not been tried. When the appeal was heard by the Court of Appeals the trial of the state court condemnation actions had been completed but the

record in those proceedings was not before or known to the Court of Appeals.

Consequently, the allegations of petitioners' amended complaint in the District court must be divided into two groups. First, there are allegations concerning alleged facts which must have occurred, if at all, by the time the amended complaint was filed in the District Court. Allegations in this group include those concerning supposed violations of the Federal Housing Act; those concerning petitioners' claimed rights in the nature of the redevelopment of the slum area; those concerning the alleged improper motives of the local governmental officials who planned the slum clearance project; and those concerning alleged violation of due process by reason of a failure to hold a trial-type rather than a legislative-type hearing on the slum and blighted designation at the time the slum clearance project was first decided upon.

As to these matters, respondents argued and the District Court and the Court of Appeals held that the allegations even if true, were insufficient as a matter of law to entitle petitioners to any relief whatever, and that a judicial-type hearing was not required at that stage. The Supreme Court of Illinois agreed with both Federal courts on these issues and the decisions of these courts were clearly correct. Obviously, it is unnecessary to hold factual hearings on the truth or falsity of legally insufficient allegations.

Second, petitioners also alleged in their complaint that the area in question was not "slum and blighted" and that consequently the taking of their property would not be for a public use. They also alleged that the designation of the area as "slum and blighted" necessarily depreciated property values and would, under Illinois eminent domain rules, necessarily prevent residents from obtaining the

just compensation guaranteed them by the Fourteenth Amendment.

As to these allegations, the District court and the Court of Appeals properly held that petitioners would receive a full judicial hearing on the matters of public use and compensation in the state court condemnation proceedings; that petitioners would not be denied constitutional rights as to these matters unless the state courts, in the condemnation actions failed or refused to grant them these rights; that Federal courts will not speculate or presume that state courts will fail to do their duty, but rather, that Federal courts will presume that the state courts will afford to the petitioners all of their constitutional rights. This holding was clearly correct as a matter of law. *Amalgamated Clothing Workers* v. *Richmond Bros. Co.*, 348 U.S. 511, 518 (1955); *Georgia* v. *Chattanooga*, 264 U.S. 472, 483 (1924); *Carver Progressive Club* v. *Miriana*, 192 F. Supp. 825 (E.D. Mich. 1960) aff'd. per curiam 288 F. 2d 889 (6th Cir. 1961); *Baber* v. *Texas Utilities Company*, 228 F. 2d 665 (5th Cir. 1956).

The opinion of the Supreme Court of Illinois is significant here because it demonstrates that this second group of allegations was not only speculative but untrue. The opinion shows that a group of the petitioners, represented by the same counsel who represent petitioners here, received a full judicial hearing on both the question of public use, *i.e.*, the "slum and blighted" character of the area, and the question of just compensation for land to be taken. The Illinois Supreme Court held that the lower court's finding that the area in question was "slum and blighted" was supported by a preponderance of the evidence. And it is conceded by petitioners that just compensation was awarded for the land taken. This disposes of petitioners' speculative allegations that their property would be taken

for other than a public use, that they would not have a full hearing on the question of "public use", and that they would not be awarded just compensation for their land.

A large portion of the area has been acquired. No appeals are pending concerning the adequacy of compensation. These facts dispose of petitioners' speculative allegations that the economic consequences of the "slum and blighted" designation are so disastrous and the rules of compensation applied by Illinois Courts so unfair that the owners of property in a "slum and blighted" area in Illinois could never receive the fair cash market value of their property when taken. On this record, petitioners' allegations concerning the possibility of inadequate compensation in Illinois eminent domain cases are necessarily abstract and speculative.

The foregoing also underscores the correctness of the holdings by the lower courts, state and federal, that petitioners' due process rights were not violated by the postponement to the condemnation proceedings stage of a judicial hearing on the "slum and blighted" designation. This holding was clearly correct as a matter of law since the initial decision to undertake slum clearance in a particular area is a legislative determination as to which no hearing is required. *Bragg* v. *Weaver*, 251 U.S. 57 (1919); *Rindge Co.* v. *County of Los Angeles*, 262 U.S. 700, 709 (1923); *Combs* v. *Illinois State Toll Highway Commission*, 128 F. Supp. 305 (N.D. Ill. 1955), Aff'd *per curiam* 349 U.S. 942; *Robinette* v. *Chicago Land Clearance Commission*, 115 F. Supp. 669, 672 (N.D. Ill. 1951), leave to file petition for mandamus denied 342 U.S. 940 (1952); *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N.E. 2d 18 (1945); *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377, 108 N.E. 2d 776 (1952); *Shapiro* v. *Chicago Land Clearance Commission*, 19 Ill. App. 2d 461, 154 N.E. 2d 329 (1st Dist.

1958). In addition, the opinion of the Illinois Supreme Court demonstrates that the Illinois procedure protects petitioners' rights and results in substantial justice.

Petitioners also complain because they were not permitted to go into the motives of the local governmental officials who directed the slum clearance. Petitioners argue that these local officials were motivated by a desire to acquire land for a branch of the University of Illinois, rather than by a desire to clear slums, and that these motives are improper or unauthorized.[1] But the condemnation proceedings have established that the neighborhood is in fact slum and blighted, and that therefore its clearance will accomplish the public purpose of slum clearance legislation. Consequently, the nature of the proposed redevelopment cannot invalidate the slum clearance.

Petitioners' argument is essentially a restatement of the contentions rejected by this Court in *Berman* v. *Parker*, *supra*. They are the same contentions that have been made in virtually all attacks on slum clearance legislation and projects. They have been rejected as often as they have been made.

Petitioners' arguments about redevelopment and alleged insufficiency of hearings prior to condemnation are iden-

---

[1] Petitioners concede (Petition, p. 7) that their real quarrel with respondents is not over the exercise of slum clearance powers in this area. They would prefer residential and commercial redevelopment to the use of the cleared land as a branch of the University of Illinois. Petitioners' prayer for relief seeks to require respondents to redevelop the area for residential and commercial use, though many of petitioners' objections are equally applicable to that redevelopment. The inconsistency of this position is obvious.

tical to those made by property owners and rejected in *Grisanti* v. *City of Cleveland*, 179 N.E. 2d 798 (Ohio Com. Pleas, 1961) aff'd. 181 N.E. 2d 299 (Ohio App. 1961) appeal dismissed 182 N.E. 2d 568 (Ohio 1962), in which the appeal of the objecting property owners to this Court was dismissed for want of a substantial Federal question. 371 U.S. 68 (1962). In fact, it would appear that the Ohio procedure afforded fewer protections to the property owners than does the Illinois procedural because, from all that appears in the two Ohio opinions, Ohio procedure does not afford property owners a judicial hearing on the question of "slum and blight" in the condemnation proceedings.

Petitioners Have No Standing To Seek Review of Compliance With Provisions of the Federal Housing Act.

After a full judicial hearing, the area in question has been adjudicated to be a slum and blighted area. Property owners in the area are receiving just compensation for their property in condemnation proceedings. These facts dispose of all possible objections to the slum clearance project. Nevertheless, petitioners argue that the condemning body is financing the project in part by a Federal subsidy; that certain provisions of the Federal subsidy act allegedly have not been complied with; and that this somehow invalidates the slum clearance. The answer is that petitioners have no standing to raise these objections, and that in any event the objections are without merit.

Petitioners now concede that this Court's decisions establish the requirement that, in order to afford them standing to complain in a Federal court of agency action or seek judicial review of that action under the Administrative Procedure Act, petitioners must

show that the particular agency action compalined of has violated their private legal rights as distinguished from their rights as members of the general public. *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923); *Alabama Power Co.* v. *Ickes*, 302 U.S. 464 (1938); *Tennessee Electric Power Co.* v. *T.V.A.*, 306 U.S. 118, 137 (1939); *Perkins* v. *Lukens Steel Company*, 310 U.S. 113, 125 (1940); *Kansas City Power & Light Co.* v. *McKay*, 225 F.2d 924, 931 (D.C. Cir. 1955), cert. den. 350 U.S. 884 (1955); *Gart* v. *Cole*, 263 F.2d 244, 250 (2d Cir., 1959), cert. denied, 359 U.S. 978 (1959).

Many of the petitioners have no property or other private legal interest (as distinguished from rights and interests as members of the general public) which will be affected by the slum clearance program. Those who are owners of property have an opportunity in the condemnation proceeding to challenge the determination of "slum and blight" and to receive just compensation for their properties. Alleged irregularities in the obtaining of some of the funds used by the condemning body to discharge condemnation judgments and to clear the slum area neither affect nor infringe any of the petitioners' legal rights. In *Allied-City Wide Inc.* v. *Cole*, 230 F.2d 827, 828 (D.C. Cir., 1956), the Court of Appeals stated, in rejecting arguments under the Federal Housing Act which are identical to those made by petitioners:

> "Appellants will be evicted, if at all, by condemnation proceedings lawfully maintained by New York City. One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal."

The Illinois Supreme Court properly held, in accordance with well-established principles, that the source of the funds employed by a public body to pay condemnation awards is of no concern to the condemnees. Appendix M to Supplement to Petition, p. 97a; *City of Chi-*

cago v. *Sanitary District*, 272 Ill. 37, 41-42, 111 N.E. 491, 493 (1916); *Summerfield* v. *City of Chicago*, 197 Ill. 270, 283, 64 N.E. 490, 494 (1902); *C. B. & Q. R. R. Co.* v. *Naperville*, 169 Ill. 25, 48 N.E. 335 (1897).

Petitioners attempt to avoid the effect of these decisions by arguing that the Federal subsidy statute was enacted for their personal protection; that the statute created private legal rights in them as residents and owners of property in slum clearance areas to require compliance with all provisions of the subsidy statute; and that the statute made them third party beneficiaries of subsidy contracts executed by the Federal and local agencies. There is no indication of any of this in the language of the Federal statute or its legislative history. On the contrary, it is clear that the provisions in the statute for the guidance of the Federal administrator in determining whether in the exercise of his discretion to grant a subsidy, were intended to prevent waste of public funds and protect the public generally. The public generally, including local residents as part of that group, are benefited by the clearance of slums.

Attempts by businessmen, residents, property owners or others to complain as private litigants of alleged noncompliance with the Federal Housing Act have been rejected repeatedly by the courts on the ground of lack of standing to sue. *Allied-City Wide, Inc.* v. *Cole*, 230 F.2d 827, 828 (D.C. Cir. 1956); *Pittsburgh Hotels Assn., Inc.* v. *Urban Redevelopment Authority of Pittsburgh*, 202 F.Supp. 486, 492-493 (W.D. Pa. 1962), affirmed 309 F.2d 186 (3rd Cir. 1963), cert. denied; sub. nom. *Hilton Hotels Corporation* v. *Urban Redevelopment Authority*, 31 Law Week 3261, Feb. 19, 1963; *Taft Hotels* v. *Housing & Home Finance Agency*, 162 F. Supp. 538 (D. Conn. 1958), affirmed 262 F.2d 307 (2nd Cir. 1958), cert. denied 359 U.S. 967 (1959); *Hunter* v. *City of New York*, 121 N.Y.S. 2d 841, 846 (Sup. Ct. 1953); *Kaskel* v.

Impellicieri, 121 N.Y.S. 2d 848 (Sup. Ct. 1953). The same result has been reached in similar cases involving other federal statutes. *Clement Martin* v. *Dick Corporation*, 97 F.Supp. 961, 964 (W.D. Pa. 1951); *Hoffman* v. *Stevens*, 177 F.Supp. 898, 903 (N.D. Pa. 1959); *Sapp* v. *Hardy*, 204 F.Supp. 602 (D. Del. 1962); *Choy* v. *Farragut Gardens*, 131 F.Supp. 609 (S.D. N.Y. 1955).

No Conflict of Decision Between the Circuits Is Presented.

Petitioners desperately argue that a conflict between the circuits exists on this question. They cite three cases, none of which supports their contention. In *Barnes* v. *City of Gadsden*, 268 F.2d 593 (5th Cir. 1959), cert. denied, 361 U.S. 915 (1960) the question of standing was not discussed and apparently was never argued or raised. In any event the decision was adverse to the residents. In *Bachman* v. *Erieview Corporation*, 311 F.2d 85 (6th Cir., 1962) (petition for certiorari pending Dkt. No. 772), the court upheld the right of a citizen and taxpayer to challenge the legality of the Federal subsidy contract. However, standing in that case was based upon a provision of the Cleveland city charter which specifically authorized a taxpayer to institute proceedings to restrain the misapplication of funds of the city, regardless of source, abuse of its corporate powers, or execution or performance of any contract made in behalf of the city in contravention of law. The court treated this statute as an authorization to the taxpayer to sue on behalf of or in the place of the municipality on any cause of action which the municipality might have. In other words the suit was derivative, not private. The absence of a like special standing provision in Illinois makes this decision inapplicable here. In any event, the court held that the taxpayer's claim of an alleged violation of the Federal Housing Act was unfounded, and dismissal of his complaint was upheld.

In *Gart* v. *Cole*, 166 F.Supp. 129 (S.D. N.Y. 1958) affirmed 263 F.2d 244 (2nd Cir. 1959) cert. denied, 359 U.S. 978 (1959), the Court of Appeals affirmed dismissal of a complaint by real property owners and residential and business tenants in a slum clearance area, despite their claim that the slum clearance was undertaken in contravention of the provisions of the Federal Housing Act. The court stated and reaffirmed the general principles of standing to sue cited above. While the Court made some statements, which may be considered dicta, to the effect that the plaintiffs had standing to challenge the administrator's refusal to grant them an oral hearing or the administrator's alleged delegation of his duty to consider the feasibility of relocation plans of the local agency, these statements are of no moment because petitioners here do not assert violations on either of those grounds. Consequently, there could be no conflict between *Gart* v. *Cole*, *supra* and the Court of Appeals decision here. The Court of Appeals in *Gart* v. *Cole*, *supra* stated that, if the administrator had delegated his duty regarding the relocation plans this would have amounted to "misconduct" on his part. That interpretation may have been the reason for suggesting that judicial review might be available. No "misconduct" by the Administrator is alleged here. In any event, the Court of Appeals in *Gart* v. *Cole*, *supra* held that the plaintiffs had no right to a hearing before the Administrator and that they had presented no evidence tending to show improper delegation of duty on his part. This holding is an adequate support for the decision. This decision, like all of the others, dismisses the contentions of the residents and property owners. There is no conflict between the circuits within the meaning of the Court's Rule 19.

In any event, the undisputed facts demonstrate that no violations of the Federal Housing Act have occurred. Petitioners concede that the Planning and Housing Committee of the Chicago City Council held a hearing in April, 1961, at which all interested persons could appear and express their views on the proposed slum clearance projects. This satisfied the Federal Housing Act provision concerning a hearing (App. 5A). After petitioners had filed a voluminous brief with the Federal Administrator of the HHFA, the Administrator certified that the Chicago Land Clearance Commission had complied with the "general plan" and "relocation plan" provisions of the Federal Housing Act. The record in this case contains or describes lengthy public documents designated by respondents as the general plan for the City of Chicago and as the plans for the relocation of residents displaced by slum clearance (Rec. 197, 198, 261, 306, 772-832). Petitioners do not contend that these documents were fraudulently prepared or that they were fraudulently submitted to the Administrator. As far as any possible judicial review is concerned, the Federal Housing Act has been satisfied.

CONCLUSION.

Petitioners' contentions are merely restatements of arguments made and uniformly rejected in prior cases. The petition states no basis for the granting of the writ of certiorari.

Respectfully submitted,

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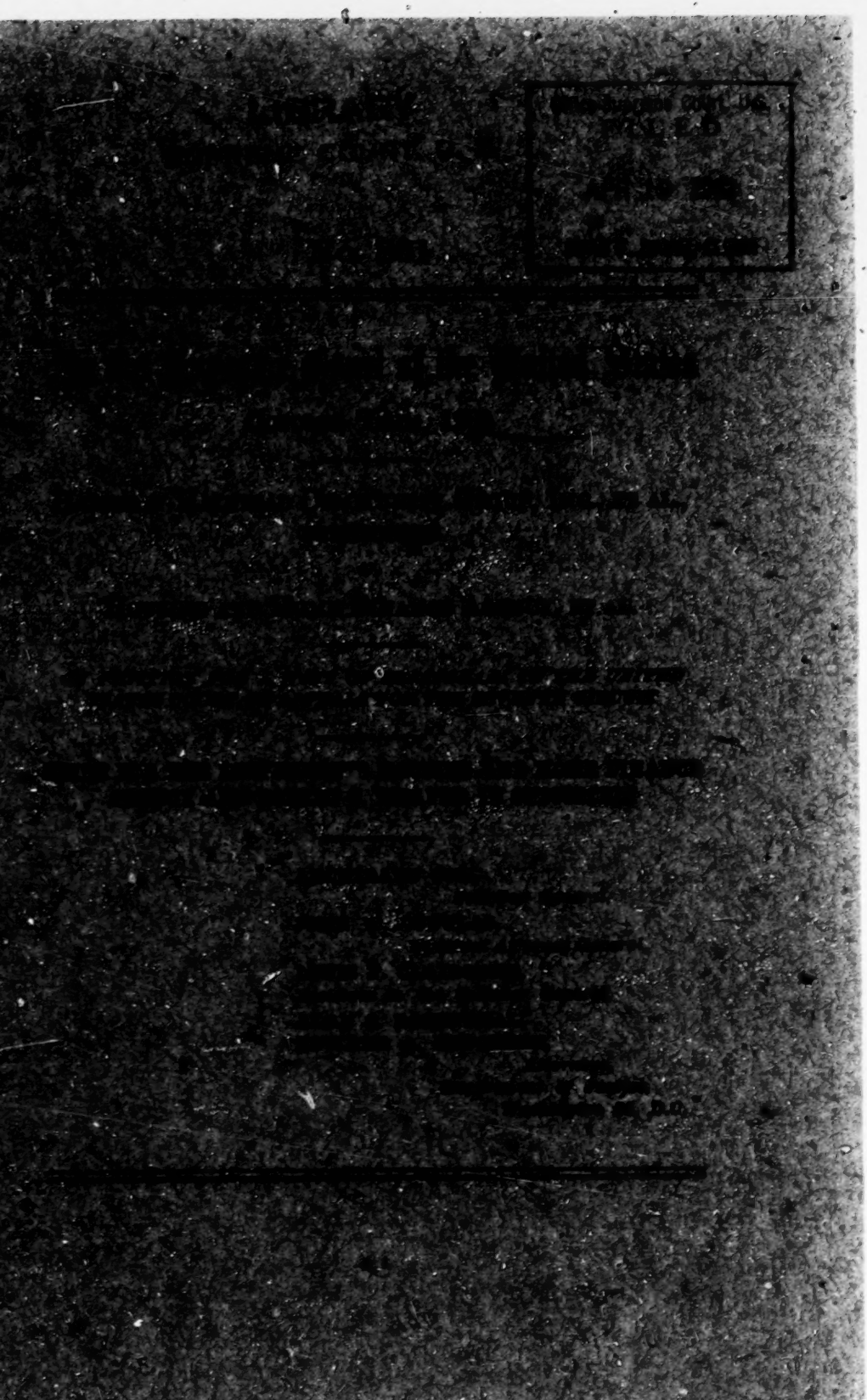

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 861

HARRISON-HALSTEAD COMMUNITY GROUP, INC., ET AL.,
PETITIONERS

v.

HOUSING AND HOME FINANCE AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS HOUSING AND HOME FINANCE AGENCY AND ROBERT C. WEAVER IN OPPOSITION

OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Illinois (Pet. App. 15a–21a) are not reported. The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1a–13a) is reported at 310 F. 2d 99.

JURISDICTION

The judgment of the Court of Appeals was entered on November 28, 1962. The petition for a writ of certiorari was filed on February 25, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether property owners, residents and businessmen of an urban renewal area redeveloped by local agencies and partially financed by federal funds have standing to assert alleged violations of the Housing Act of 1949.

STATUTES INVOLVED

The relevant provisions of the Housing Act of 1949, as amended, 42 U.S.C. 1441–1462, are reprinted in petitioners' separately bound Appendix, pp. 39a–56a.

STATEMENT

This action was instituted by petitioners, a nonprofit corporation organized for the protection of the interests of the Near West Side Neighborhood of Chicago and 280 individuals, most of whom are property owners, small businessmen or residents of the area. They seek to enjoin the local authorities from proceeding further with an urban renewal project involving the neighborhood and also ask that the Housing and Home Finance Agency (HHFA) and its Administrator be restrained from continuing the federal government's financial participation in the project under the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1441 *et seq.*

The original impetus for the redevelopment of the Near West Side Neighborhood came from residents and property owners in that area. Recognizing that portions of the area had seriously deteriorated and were in need of renewal, they formed a voluntary civic organization, the Near West Side Planning Board (Pet. App. 3a). In September, 1956, in part

as a result of their activities, a parcel of land in the Near West Side, the Harrison-Halstead Tract, was designated as a slum and blighted area (*Ibid.*). Earlier, in May of 1956, most of the balance of the neighborhood had been designated as a conservation area to be redeveloped by rehabilitation and spot clearance (*Ibid.*).

On January 16, 1958, the Chicago Land Clearance Commission adopted the Harrison-Halstead Redevelopment Plan, which provided for the clearance of most of that tract and its redevelopment as a residential area for families of moderate income (*Ibid.*). This plan subsequently was approved by the City, the State Housing Board and the HHFA. On May 16, 1958, the HHFA entered into a contract with the Land Clearance Commission to provide financial assistance to the project, and much of the land had been cleared by mid-1960 (*Ibid.*).

In 1960, however, the City began to consider the possibility of using the tract as a campus site for the University of Illinois (Pet. App. 4a). On February 10, 1961, the Mayor of Chicago publicly announced that he had reached an agreement with the University trustees to situate a campus on the Harrison-Halstead Tract and on two adjacent areas, the Roosevelt-Blue Island and Congress-Racine tracts (Pet App. 4a). On March 29, 1961, the Chicago Land Clearance Commission designated the two additional tracts as slum and blighted areas and adopted plans to redevelop the Roosevelt-Blue Island Tract and about half of the Congress-Racine Tract as a campus site, with the remaining portion of the latter tract to be used

for private housing (Pet. App. 5a). Further, it amended the Harrison-Halstead Redevelopment Plan to provide that, except for three acres, that area also would be used by the University (Pet. App. 5a).

On April 13, 1961, the Planning and Housing Committee of the Chicago City Council conducted public hearings on the new plans (Pet. App. 5a). Objectors were permitted to appear and make statements, but they were not given a right to subpoena witnesses or documents, or to cross-examine City officials (*Ibid.*). Thereafter, the City Council and the State Housing Board approved the urban renewal plans and forwarded them to the HHFA for final approval (Pet. App. 5a–6a). Objectors filed briefs with the HHFA, arguing against approval of the plans. On March 21, 1962, the Administrator approved the projects as conforming to the requirements of the Act, and entered into loan-and-grant contracts with the City (Pet. 6a).

On April 17, 1962, the Land Clearance Commission filed its first condemnation suit, and three days thereafter the petitioners instituted the instant action, contending that the HHFA Administrator had erred in approving the project plans (Pet. 7a). Specifically, petitioners urged that the Administrator and the City had not complied with Section 105 of the Public Housing Act, 42 U.S.C. 1455, in three respects: (1) the urban renewal plan under consideration did not conform to a general plan for the development of the locality as a whole (sub-section (a)(iii)); (2) there was no "feasible method" for the temporary

relocation of families displaced from the urban renewal area (sub-section (c)); and (3) a trial-type "public hearing" was not held (sub-section (d)). In support of their claim to a trial-type hearing, they also invoked the due process clauses of the Fifth and Fourteenth Amendments. In addition, they alleged other violations of the Act not pressed here.

The district court dismissed the original complaint (Pet. App. 22a–34a) and a supplemental complaint (Pet. App. 15a–21a) for lack of a substantial federal question. On appeal, the court of appeals affirmed, holding that petitioners lacked standing to maintain this action because they had not established that the acts of respondents constituted an invasion of their private legal rights.

While the present suit was *sub judice*, the condemnation actions instituted by the City were proceeding in the Illinois State courts. Shortly after the Court of Appeals for the Seventh Circuit affirmed the dismissal of the instant complaint, the Supreme Court of Illinois rendered its decision in one of the related state court suits, rejecting the plaintiffs' contentions. That opinion is reprinted in the Appendix to the Supplement to Petition for Writ of Certiorari. The state court litigation is pending here on appeal. *Gonzalez* v. *City of Chicago*, No. 984, this Term.

ARGUMENT

By this action, petitioners seek to arrest an urban renewal project which has long since been approved by the City of Chicago, the State of Illinois, and the

federal Housing and Home Finance Agency, and which is already nearing completion. They do not dispute the power of the local agencies to undertake the project or the authority of the federal agency to give financial assistance. Nor do they now contend that the change in the renewal plan invalidates it. But they say, in substance, that the undertaking was accomplished without proper regard for their interests as the people most directly affected.

Accepting petitioners' complaint as true (as we must for present purposes), we cannot say that it fails to allege injury. Yet, it must be remembered that the City Council of Chicago approved the project after hearing their objections and that the HHFA Administrator approved it after considering their opposing briefs. Moreover, all those who are property owners have had, or will have, full compensation in the state court proceedings. The only question here is whether petitioners are entitled to judicial examination of their complaints in the federal courts on the ground that the Housing Act was allegedly violated.

After fully reviewing the question of standing and exploring the claimed conflict in decisions, considering the need for this Court's intervention, and weighing the enormous consequences of further delay against the slim prospect of ultimate practical benefit to the petitioners, we have concluded that we should urge the Court to deny the petition for certiorari.

A. The issue of standing and the alleged conflict of decisions

In its present posture, the only real issue in this case is that of standing to sue. Indeed, except for a single insubstantial constitutional claim,[1] the entire controversy can be disposed of on the basis of petitioners' lack of standing to assert alleged violations of the Housing Act of 1949. As we read its opinion, that is precisely the holding of the court of appeals below. And, in our view, the decision is correct. Nevertheless, because the question of standing is here presented in a somewhat novel context and dismissal of certain of the claims on this ground encounters apparent difficulties, we examine the issue in some detail. While all the claims arise under the same statute, they seem to fall into three distinguishable categories.

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[1] Petitioners say that the due process clauses of the Fifth and Fourteenth Amendments guarantee them a trial-type hearing on the issue whether the project area is in fact a "slum or blighted area" because such a designation depresses property values (Pet. 22–32). The claim, it seems to us, is foreclosed by this Court's ruling in *Berman* v. *Parker*, 348 U.S. 26. The redevelopment law there upheld provided only for a general legislative hearing. *Id.*, at 29; D.C. Code (1951), § 5-705(b)(2). And, at the same time, the Court emphasized the primarily legislative responsibility in this area, the broad discretion of the administration authorities, and the very limited scope of judicial review. The upshot is that there is no constitutional right to a full adversary hearing in the premises. In any event, petitioners have no cause for complaint in this instance. For the decision of the Illinois Supreme Court (Pet. Supp.) makes it clear that the administrative designation of an area as "slum and blighted" is not final and may be contested in the judicial proceedings incident to condemnation.

1. There are, at the outset, certain complaints about the Administrator's action or non-action which the petitioners, as property owners, residents and businessmen of the renewal area, have no special standing to raise. Thus, their connection with the project area gives them no peculiar interest in securing compliance with the provision of the Housing Act which requires the urban renewal plan to "conform to a general plan for the development of the locality as a whole" (42 U.S.C. 1455(a)(iii)), or with the provision which is said to bar a radical modification of the renewal plan once approved (42 U.S.C. 1456(c)(6)). For these statutory limitations (insofar as they exist) are plainly not intended for the special protection of those who will be displaced. On the contrary, like others not here involved, these provisions are included for the benefit of the government, or the public at large, or, at least, for the protection of the affected community as a whole. While failure to comply may, as it turns out, hurt some residents of the city and not others, the fact remains that the provisions cannot be said to have been designed for the protection of any definable group smaller than the entire community, and, since injury alone does not confer standing, those in the affected area are in no better position to complain about the violation than any other member of the public.

As to the claims in this category, applicable decisions of this Court seem to have settled petitioners' lack of standing to maintain a court action. As mere members of the city community, their interest is too

remote. Cf. *Frothingham* v. *Mellon*, 262 U.S. 447. Nor is standing conferred because the alleged violation may actually have injured them. *Tennessee Power Co.* v. *TVA*, 306 U.S. 118, 143; *Alabama Power Co.* v. *Ickes*, 302 U.S. 464. On this point, the lower courts are in complete agreement. With particular reference to the Housing Act, every decision reaching the question denies standing to assert noncompliance with provisions not plainly intended for the protection of a distinct class of which the complainants are members.[2]

2. In our view, the same considerations govern even when the violation charged involves a provision admittedly inserted for the benefit of the would-be plaintiffs, *e.g.*, the requirement that there be a "feasable method for the temporary relocation of families displaced from the urban renewal area" (42 U.S.C.

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[2] *Pittsburgh Hotels Ass'n, Inc.* v. *Urban Redevelopment Auth.*, 309 F. 2d 186 (C.A. 3), affirming 202 F. Supp. 186 (W.D. Pa.), certiorari denied *sub. nom. Hilton Hotels Corp.* v. *Urban Redevelopment Authority*, 372 U.S. 916; *Gart* v. *Cole*, 263 F. 2d 244, 250 (C.A. 2), certiorari denied, 359 U.S. 978; *Taft Hotel Corp.* v. *Housing and Home Finance Agency*, 262 F. 2d 307 (C.A. 2), affirming 162 F. Supp. 538 (D. Conn.); *Allied City Wide* v. *Cole*, 250 F. 2d 827 (C.A.D.C.)

The argument that section 10(a) of the Administrative Procedure Act, 5 U.S.C. 1009(a), confers standing on anyone "adversely affected or aggrieved" by administrative action, even when the underlying statute does not so provide, has been consistently rejected. See, e.g., *Kansas City Power & Light Company* v. *McKay*, 225 F. 2d 924, 931-933 (C.A.D.C.), certiorari denied, 350 U.S. 884. With particular reference to the Housing Act, the courts are unanimous in denying the claim. *Gart* v. *Cole*, *supra*, at 250-251; *Taft Hotel Corp.* v. *Housing and Home Finance*, 162 F. Supp. 538, 540 (D. Conn.). The ruling below is the same. Pet. App. 9a-10a.

1455(c)), or the requirement that the local agency hold a "public hearing" before acquiring the land (42 U.S.C. 1455(d)).

At first blush, it may seem harsh to say that someone whom Congress has sought to protect, and who in fact suffers because the legislative mandate is ignored, has no standing to complain. Yet, that is often the case. Indeed, this Court has indicated that the employees of government contractors have no standing to enforce judicially the statutory guarantee of minimum wages. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 131. The reason is that, in the absence of some clear indication that judicial remedies were contemplated, Congress cannot be presumed to have encouraged "'[t]he interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, [which] would be productive of nothing but mischief.'" *Id.*, at 131–132, quoting from *Decatur* v. *Paulding*, 14 Pet. 497, 516. The conclusion that Congress meant to do its own policing is especially justified when the function is one that does not readily lend itself to judicial review. And certainly this is true of urban renewal. See *Berman* v. *Parker*, 348 U.S. 26.

Thus, here, we do not read the congressional purpose to encourage urban renewal, and, incidentally, to protect the inhabitants of the project area, as designed to confer upon them judicially enforcible rights. At least there would seem to be no right of action against the federal administrator who deals only with the local agency and is a remote stranger to the affected residents. But, however convinced

we may be that here, also, petitioners lack standing, we recognize that the question with respect to claims in this category is arguably different. Moreover, we must answer the claim that there is a conflict of decisions in this area.

The serious allegation of conflict is that the decision below is inconsistent with the holding of the Court of Appeals for the Second Circuit in *Gart* v. *Cole*, 263 F. 2d 244.[3] On analysis, we conclude that the disagreement, if it exists, does not involve all the claims falling into this broad category. A further separation is justified.

The distinction is illustrated by considering, on the one hand, the claim made in *Gart* v. *Cole*, that the Act gives the displaced residents a right to be heard by the Administrator before he approves the project, and, on the other hand, the present claim that the relocation program does not conform to the standards required by the federal statute and regulations. Certainly, in the first case, the arguments in favor of recognizing standing to require compliance are much stronger, for the statutory provision itself might arguably confer a legal right to demand the

[3] *Barnes* v. *City of Gadsden*, 268 F. 2d 593 (C.A. 5), certiorari denied, 361 U.S. 915, and *Blachman* v. *Ericview Corp.*, 311 F. 2d 85 (C.A. 6), certiorari denied, March 18, 1963 (No. 772, this Term), cited by petitioners in support of their claim of conflict (Pet. 21), are plainly distinguishable. The standing of the plaintiffs in the first case (which the court does not discuss) is obviously premised on the *constitutional* claim asserted; no violation of the Housing Act was alleged. See 174 F. Supp. 64 (N.D. Ala.). And in *Blachman* the finding of standing was expressly based on a provision of the Cleveland City Charter. See 311 F. 2d at 85–86.

hearing. Moreover, the *Gart* complaint, unlike that here, alleged a deprivation of procedural rights, an order of claim peculiarly appropriate for judicial consideration and one which may be cognizable even when the merits of the administrative action is not open to judicial review. See, *e.g., Service* v. *Dulles*, 354 U.S. 363, 373; *Vitarelli* v. *Seaton*, 359 U.S. 535, 540. Thus, in our view, there is no conflict, even in principle, between *Gart* v. *Cole* and the decision below, insofar as the one recognizes standing to assert a claimed statutory right to a hearing and the other denies standing to complain about the adequacy of the relocation program.

There remains, it is true, the holding of *Gart* v. *Cole* that the displaced residents had standing to assert the Administrator's failure to review personally the sufficiency of the relocation program (a responsibility he had allegedly delegated to the local agency). See 263 F. 2d at 251. Superficially, this claim is close to the one made here with respect to the adequacy of the relocation program. But, when we examine the distinct provisions invoked in the two cases (§ 1451(c)(iv) in *Gart*, § 1455(c), here), and the differing contexts in which the respective violations are asserted, it becomes clear that the complaints are of a different order. The claim in *Gart* was really a diluted version of the contention before the local residents were denied a hearing before the Administrator: the argument was that, if he need not decide the relocation question on the basis of a hearing, he must at least decide it for himself. This

is another *procedural* due process claim. Not so here: petitioners' claim goes to the merits of the relocation plan and its compliance with the *substantive* standards announced in the statute and the HHFA Manual.

3. We have discussed all of petitioners' complaints with respect to the Housing Act, except two. These are (1) the contention that they were denied an opportunity to be heard, as contemplated by the statute (see 42 U.S.C. 1455(d)), on the issue whether two of the tracts involved were properly designated "slum and blighted areas", and (2) the further claim that the designation was made without "good-faith fact-finding," said to be implicitly required by the Act (42 U.S.C. 1460(a), 1460(c)(1), being the provisions invoked). While these complaints directly charge violations by the *local* agency, rather than the federal administrator, and involve different provisions of the act, we acknowledge their kinship to the procedural claims asserted in *Gart* v. *Cole*. Accordingly, it may rightly be said that *Gart* (which sustained standing on similar issues) and the decision below (which denied standing with respect to these claims) are inconsistent to this extent. But, if a narrow conflict subsists, there is no occasion to resolve it here, for the procedural due process complaints asserted in this case are as plainly frivolous as those put forward and rejected in *Gart*.

The suggestion that the Housing Act requires a fuller hearing than was accorded here is clearly without merit. The section invoked, 42 U.S.C. 1455(d)

merely guarantees that the local agency shall hold a "public hearing" before the land is "acquired." There is no basis for supposing a trial-type hearing was contemplated. On the contrary, every indication is that the provision intends to assure a legislative hearing, at which everyone "who has an interest" shall be afforded "a right to come in and be heard." See 95 Cong. Rec. 8541, 8549. Nor is the Act concerned with the date of the hearing; so long as it precedes acquisition, the requirement is satisfied. Plainly, the statutory mandate was fulfilled in this particular.

The further claim with respect to the designation of the Roosevelt-Blue Island and Congress-Racine tracts as "slum and blighted areas" without "good-faith fact-finding" is equally insubstantial. Admittedly, an open hearing involving that question was held. There is nothing in the federal statute which suggests that more is required. The provisions invoked merely restrict an urban renewal project (except with respect to open land) to "a slum area or a blighted, deteriorated or deteriorating area." 42 U.S.C. 1460(a), 1460(c)(1). But even if the local renewal authorities failed to make a sufficient investigation, the factual issue remains open in the state condemnation proceedings and there is no occasion to consider it here. Indeed, in the related state case now pending on appeal in this court (*Gonzalez* v. *City of Chicago,* No. 984, this Term), the Supreme Court

of Illinois has finally determined that one of the two areas involved here was a "slum and blighted area." See Supplement to Petition for Certiorari in this case.

B. The importance of the issue and the necessity for definitive resolution

Undeniably, the question of standing to assert violations of the Housing Act is of substantial importance to all those involved—the residents of the affected area, the local agencies, and the federal Housing and Home Finance Administration. Indeed, from the government's viewpoint, a holding generally recognizing standing to sue would have very serious consequences. For there are currently some 1200 federally-financed urban renewal projects in process in 650 localities spread over 42 States, the District of Columbia, Puerto Rico and the Virgin Islands. And three billion dollars in federal funds have been committed to date.

But it does not follow that this Court should hasten to intervene. The fact is that decisions of this Court already foreclose the great majority of the possible claims under the Housing Act. And, as to most of the rest, the lower courts, as we have seen, are in virtual agreement that judicial review is not available to private parties. No conflict in result exists, nor any embarrassing disagreement in principle which requires resolution by this Court.

C. The appropriateness of this case as a vehicle and the practical consequences of further delay

Petitioners correctly emphasize that this case presents the question of standing uncluttered by the factual issues that might be introduced by a trial on the merits. We do not agree, however, that it presents an appropriate occasion for this Court's intervention.

In the first place, we note that certain of the claims can be disposed of without reaching the question of standing. As we have seen, this is the case with respect to the only area as to which there is some disagreement among the lower federal courts. Also, the proliferation of claims under the Housing Act and the joinder of both federal and local agencies as defendants tends to confuse the issue. For it may well be that some of the complaints are properly asserted against one defendant but not another. Moreover, it is not always clear who is charged with the statutory violation, whether the local agency for allegedly failing to satisfy the standards of the federal enactment, or the federal administrator for failing to require compliance by the local authorities. And, finally, the violations themselves are alleged with such elaborate circumspection that it is sometimes questionable whether the complaint is not too subtle for judicial cognizance, even assuming standing to sue.[4]

[4] That was, in effect, the view of the district judge. See *e.g.*, Pet. App. 31a-32a (Opinion on Order dismissing Original Complaint); Pet. App. 19a (Opinion on Order dismissing Amended Complaint).

Other and perhaps more important practical considerations counsel against testing the issue of standing in this case. One cannot overlook the enormous consequences of halting the present project at this late stage. One of the areas involved, the Harrison-Halstead tract, is now almost fully cleared. Commitments have been made. Federal funds totalling almost 3 million dollars have already been expended. A reversal of the plan, or even a prolonged delay, would result in extravagant waste and serious economic injury to innocent third parties. What is more, all this would be done without really advancing the petitioners' cause. It is very doubtful that, on the merits, they could prevail. But, even if it were otherwise, it is difficult to see what practical relief petitioners could obtain at this point. We do not suggest that the rights of private claimants, if they have any in the premises, should be disregarded merely because a great public endeavor is involved. But neither can we properly ignore the "confusion and disorder" that will ensue if the program is further held up. *Perkins* v. *Lukens Steel Co.*, *supra*, 310 U.S. at 130–131. The interests of the government (including the state and local governments and instrumentalities, as well as the United States), of the taxpayers and of the investors must also be considered. In this instance, it seems to us proper to weigh heavily in the scales the public cost of vindicating dubious private claims which, for the most part, have been mooted by the march of events.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted.

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No. 861

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,

Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

REPLY BRIEF OF PETITIONERS.

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REPLY BRIEF OF PETITIONERS.

The Related State Cases Are Now Before This Court on Appeal.

The related state-court proceedings referred to in the Petition (pp. 10-11) are now before this Court on appeal, *Guillermo Gonzalez, et al.*, v. *City of Chicago*, No. 984 on this Court's current docket. The Jurisdictional Statement was filed April 3, 1963; appellee's motion is expected momentarily, and appellants will file their reply brief promptly thereafter. Hence, no appreciable delay will result if this Court defers consideration of the present Petition until the related state-court appeal is also ready for consideration. In view of the close interrelationship of the federal and state cases, raising *inter alia* the question of whether these petitioners' rights may best be vindicated in a federal or a state forum, it is again respectfully suggested that this Court should consider these two cases together.

The Brief of the Solicitor General.

1. "Practical Considerations."

The Solicitor General admits that the Amended Complaint adequately alleges that respondents have violated the Housing Act (pp. 4-5), thereby injuring petitioners (p. 6). He admits that at least some of the Housing Act provisions relied on by petitioners were enacted for their particular benefit (pp. 9-10, 13). He admits that the question of standing to assert violations of the Housing Act is of great importance both to the government and to the private parties affected (p. 15); that the standing question is presented in a novel context (p. 7); and that in at least some respects the decision on standing by the Seventh Circuit here conflicts with that of the Second Circuit in *Gart* v. *Cole*, 263 F.2d 244 (C.A.2, 1959), cert. den. 359 U.S. 978 (1959) (pp. 11-13).

Nevertheless, the Solicitor General urges this Court (p. 17) to deny petitioners relief, *inter alia*, because of "practical considerations"—because "commitments have been made"; because "3 million dollars have already been expended"; because most of petitioners' claims "have been mooted by the march of events."

Now, in the first place, the Solicitor General exaggerates the degree of irreversible change which has already taken place. The challenged projects are not "already nearing completion" (p. 6). No University construction has begun. Of the three tracts involved, Harrison-Halsted was already largely cleared at the time this controversy arose; some additional clearance has taken place, but Hull-House still stands, as does the brand-new Holy Guardian Angel School (Appx. 4a, 7a), as also does the building owned by two of the appellants in the related state-court appeal. In the Roosevelt-Blue

Island Tract, demolition has begun only in one corner of the area, and most of the homes and places of business of the petitioners who live and work there can still be saved. In the Congress-Racine Tract, which petitioners have alleged is the best part of the project area (Appx. 6a), property acquisition has not even begun. Thus the "march of events" has not yet destroyed the greater part of what petitioners seek to preserve, and this Court can indeed grant them "practical relief".

And what if it were otherwise? What if only a single petitioner kept up the battle, if only a single petitioner's home remained standing? Would not his rights still be as much entitled to protection as the rights of all were originally?

As for any "confusion and disorder" that may ensue if this Court grants certiorari, or any (unspecified) economic injury to (unspecified) "innocent third parties", the responsibility for this falls squarely on respondents, who knowingly elected to follow a course virtually guaranteed to produce litigation, and not on petitioners, who have been diligent in seeking relief from respondents' illegal acts at every level (Appx. 1a), including this one.

Furthermore, what is the authority of the Solicitor General for asserting (p. 17) that it is "very doubtful" that petitioners could prevail on the merits? Can he so certainly predict that this Court would agree with the Seventh Circuit rather than the Second on the issue of standing? And on what basis does he ask this Court to presume that petitioners could not prove the detailed allegations of their Amended Complaint, which concededly add up to violations of the Housing Act?

Petitioners submit that this argument of the Solicitor General boils down to nothing more than "reasons of

state". He seems to have forgotten for the moment that in our legal system, vindication of individual rights is a higher interest—and has more to do with public education—than the bricks and mortar of a university.[1]

2. The Joinder of State and Federal Agencies.

At two places in his brief (pp. 13, 16), the Solicitor General indicates that he finds some confusion in the joinder of state and federal agencies as defendants in this action. But there is nothing to be confused about. Except for Counts I and IX (the latter not here at issue), each count of the Amended Complaint charges that the local agencies violated specified provisions of the Housing Act and regulations by certain specified actions, and that the federal Administrator subsequently violated the Act by approving the actions of the local agencies and granting them a federal subsidy in face of their violations, which were called to his attention by petitioners. Count I charges that the local agencies and the federal Administrator jointly violated the Act by agreeing to make illegal modifications in the original duly adopted Harrison-Halsted Redevelopment Plan.

Petitioners reiterate what they said in the Petition (p. 34) about the suitability of the present record for review. As for the Solicitor General's remarks at the end of page 16 of his brief, petitioners had always understood that "circumspection" was a virtue, and that nothing was "too subtle for judicial cognizance" while this Court sits.

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[1] The involvement of the University of Illinois here in no way makes this case unique; universities are major urban renewal redevelopers. See e.g., **Boro Hall Corp. v. Impellitteri**, 120 N.E. 2d 847 (N.Y. 1954) **Bleecker Luncheonette v. Wagner**, 143 N.Y.S. 2d 628 (App. Div. 1958); **Edens v. City of Columbia**, 91 S.E. 2d 280 (S.C. 1956); **Gart v. Cole**, 262 F.2d 244 (C.A. 2, 1959); **Griggs v. Borough of Princeton**, 162 A.2d 862 (N.J. 1960); **Kintzele v. City of St. Louis**, 347 S.W.2d 695 (Mo. 1961).

3. Petitioners' Standing under the Housing Act.

In his brief (pp. 7-14), the Solicitor General abandons the Court of Appeals' blunderbuss approach to the standing question; instead, he divides petitioners' Housing Act claims into several categories, and seeks to dispose of the standing question as to each category separately. Petitioners propose to show why the Solicitor General is mistaken as do each of their claims. In any event, the fine distinctions he is forced to invent in order to avoid a conflict between circuits, the lengths to which he is forced to stretch prior decisions of this Court, combined with the admitted novelty and importance of the issues presented, all argue for, not against, the granting of certiorari.

General Plan. The Solicitor General seeks to dispose of petitioners' general plan claims (Petition p. 9) under the rubric that one may complain of the violation of a particular statutory requirement[1] only if he is particularly affected by such violation, and if the requirement was designed for the protection of a distinct class to which he belongs.

Petitioners acknowledge the principle (Petition pp. 17-20), but deny that their general plan claims fall within it (p. 16). They think they discern in this provision of the Act an intent to protect not merely or primarily the community at large, but residents of present or prospective urban renewal areas, and particularly those who may rely on an officially adopted general plan when lo-

[1] It is clear that the Solicitor General concedes that all of the Housing Act provisions in question are mandatory requirements, not merely Congressional suggestions to the Administrator as the other respondents imply (their brief, p. 14). See 42 U.S.C. §1462 (Appx. 54a-56a), authorizing the Administrator to waive these requirements in disaster areas only.

cating businesses in or near such areas, buying or rehabilitating properties, or otherwise.

Further argument cannot be given here; but it seems to petitioners that the Solicitor General is altogether too quick in disposing of this extremely important statutory provision. Standing under this provision has not been litigated in any prior case; nor did the Court of Appeals here clarify its purpose, since the court obviously was proceeding on a much less sophisticated theory of standing than that now offered by the Solicitor General. Petitioners respectfully submit that this issue, so important to urban renewal and the future of the planning profession, is worthy of full argument before this Court.

Relocation. The Solicitor General very properly admits, as was in any case obvious, that the relocation provisions of the Housing Act (Petition p. 8) were intended for the special protection of displaced families; yet still he would deny them standing. This is not merely harsh, as he admits, but goes far beyond this Court's earlier decisions.

Perkins v. *Lukens Steel Co.*, 310 U.S. 113 (1940), cited by the Solicitor General, stands only for the propositions (1) that government purchasing regulations are strictly an internal affair of the executive branch, with which the judiciary cannot interfere, and (2) that, since no one has any vested legal right that the government shall contract with him (or with his employer), he has no right to complain concerning any "prevailing wage" clause which the government may require to be inserted in any such contract.

The present case stands in complete contrast. Here, government is not acting in a proprietary capacity, or affecting merely those who seek the privilege of selling

to it; instead, it is reaching out and seizing the homes of petitioners without their consent.[1] As this Court pointed out in *Berman* v. *Parker*, 348 U.S. 26, 32 (1954), urban renewal is an exercise of the police power; hence the doctrine that the judiciary should not interfere in the internal affairs of the executive branch has no application. Unlike the plaintiffs in the *Perkins* case, petitioners here do have existing legal rights in their homes, rights which yield only to *lawful* exercise of the power of eminent domain.

In suggesting (p. 10) that Congress cannot have intended judicial review under the Housing Act, the Solicitor General completely ignores the fact that this Act was adopted *after* the Administrative Procedure Act, and is therefore subject to the presumption that judicial review was intended unless the contrary is clearly indicated (see cases and legislative history cited in the Petition, p. 22). As to whether urban renewal "lends itself to judicial review", there is all the difference in the world between reviewing the wisdom of a project, which *Berman* v. *Parker* rejected, and seeing to it that specific statutory requirements are observed.

The Solicitor General does not claim (as do the Illinois respondents, p. 16 of their brief) that the holdings of *Gart* v. *Cole*, 263 F.2d 244, 250-1 (C.A.2, 1959), cert. den. 359 U.S. 978 (1959) as to standing are merely dicta; but he seeks to distinguish the relocation claims granted standing there from those of petitioners here by creating

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[1] It is immaterial to the availability of federal judicial review that the local agency is the actual condemnor, and that the federal Administrator does not deal directly with the individual property owners, since he supervises, approves, and subsidizes all that is done by the local agency. See **Frost** v. **Corporation Commission**, 278 U.S. 515 (1929), discussed in **Alabama Power Co.** v. **Ickes**, 302 U.S. 464, 484 (1938).

a distinction between standing to assert procedural violations and standing to assert substantive violations of the Act. This artificial distinction (without which a square conflict between the decision below and *Gart* v. *Cole* is inescapable) stems from nothing in *Gart* v. *Cole*, or in the opinion below, or in any prior decision as to standing. The Solicitor General does not claim otherwise; he offers in support of his brainchild only the extremely distant analogy of two loyalty-security cases, and some reasoning which goes more to scope of review than to standing to secure review.

Petitioners believe that the attempted distinction is wholly without substance, but also that this is not the place to argue the point. They respectfully submit, however, that before this new embellishment is engrafted onto the rococo structure of the federal law of standing, this Court should hear plenary argument.

Public Hearing. The Solicitor General concedes that under the holding of *Gart* v. *Cole*, *supra*, petitioners would have standing to assert the absence of a proper public hearing, but nevertheless suggests certiorari should be denied because petitioners' claim on this point is "frivolous" on the merits. This ties in with his earlier assertion (p. 7) that petitioners' constitutional due-process arguments as to hearings are "insubstantial".

Petitioners deny the accuracy of this categorization, and assert that their contentions are supported by legislative history, authority, and reason—certainly sufficiently to warrant a full hearing by this Court. The point is canvassed at length in the Petition (pp. 9-10, 16, 22-32), and it would be futile to say more here.[1]

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[1] The hardships discussed in the Petition (pp. 29-31) are extensively documented in a scholarly article just published,

Good-Faith Fact-Finding. Equally insubstantial, according to the Solicitor General, is petitioners' claim (Petition p. 9-10) that the Housing Act implicitly requires good-faith fact-finding by the local agency, and that this requirement too was violated.

On this point, the Solicitor General is in error when he states (p. 14) that an open hearing involving this question was held. At the hearing before the Chicago City Council committee—the only uninterrupted hearing held prior to condemnation—no data whatever was presented by the Land Clearance Commission as to what investigation if any it had made of the Roosevelt-Blue Island and Congress-Racine Tracts, and petitioners and other objectors were not permitted to question officers or employees of the Commission. At the condemnation hearing, the trial court expressly denied petitioners any discovery as to the officers and records of the Commission, and refused to admit any testimony as to what kind of investigation the Commission had made (see No. 984, Jurisdictional Statement, pp. 7, 12-13, 20). The fact is that petitioners' charge that the hasty "investigations" made by the Commission here were nothing but a sham

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[1] (Continued)
Glaves, **Date of Valuation in Eminent Domain: Irreverence for Unconstitutional Practice**, 30 U. of Chi. L.R. 319 (1963).

It should be said, anent the Solicitor General's argument (p. 7 n. 1), that **Berman v. Parker**, 348 U.S. 26 (1953), in no sense forecloses petitioners' due process arguments, for the very good reason that no procedural issues relating to hearings or otherwise were raised, argued, or decided there. **Berman v. Parker** is enough of a landmark case for what it did decide; it should not be treated as if it had settled every conceivable question of urban renewal law from now until the end of time (see the other respondents' brief, pp. 4-6).

and a fraud remains to this day uncontradicted by anything in the Record here or in the state-court appeal.

The Housing Act restricts an urban renewal project to "a slum area or a blighted, deteriorated or deteriorating area",[1] which necessarily implies that someone—obviously the local agency—must in good faith investigate whether a proposed project area can in truth be so classified. Congress surely did not intend that local agencies should proceed by guesswork or prejudice, or that they should accommodatingly designate whatever areas might be desired by an influential redeveloper, regardless of the facts. Nor can Congress have intended to rely on possible subsequent review by condemnation courts to make up for the failure of local agencies to investigate before acting. As for the federal Administrator, his duty is plainly to insure that a good-faith investigation is in fact made. Here, petitioners have alleged, both the local agency and the federal Administrator failed in their duty. *Gart* v. *Cole*, as the Solicitor General concedes, gives petitioners standing; hence they should be entitled to a full hearing on this claim.

Minority-Group Housing and Consultation. The Solicitor General has for some reason failed to mention this alleged violation of the HHFA's regulations (Petition, pp. 8-9). Presumably, however, he would not deny that the cited regulation was designed to protect minority residents of project areas. Even if his "substantive-procedural" dichtomoy were accepted, the consultation requirement, at least, would appear to fall on the procedural side, as to which he admits *Gart* v. *Cole* would grant standing.

Petitioners' Other Housing Act Claims. In drawing up their Petition for Certiorari, petitioners found it

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[1] 42 U.S.C. §1460(a), (c)(1), (Appx. 51a-52a).

necessary to select only the most striking of their Housing Act claims for individual treatment; but it was not their intention to, nor did they, waive their other claims in the event certiorari should be granted, or in the event of a possible reversal. (See par. 3 under Questions Presented, Petition p. 2; also p. 8) Actually, any decision as to petitioners' standing to assert their more important claims would undoubtedly be sufficient to determine also their standing as to their remaining claims.

The Brief of the Illinois Respondents.

There is little in the brief of the Illinois respondents that merits reply. Almost completely it avoids meeting the issues raised by petitioners, and instead does battle with a series of convenient strawmen. Moreover, it contains so many factual and legal errors that it can be of no assistance to this Court in deciding whether to grant certiorari. A few of its more flagrant errors:

(1) The statement (pp. 11-12) that petitioners' arguments as to due process and hearings are identical with those rejected in *Grisanti* v. *City of Cleveland*, 179 N.E. 2d 798 (Ohio C.P. 1961), aff'd 181 N.E.2d 299 (Ohio App. 1961), app. dism. 182 N.E.2d 568 (Ohio 1962), app. dism. 371 U.S. 68 (1962). For a refutation of this statement, see 179 N.E.2d at 800, 801, 807; 181 N.E.2d 301, 307; and the Jurisdictional Statement, No. 535, this Term.

(2) The statement (p. 13) that petitioners' Housing Act arguments are identical with those rejected in *Allied-City Wide, Inc.* v. *Cole*, 230 F.2d 827 (C.A.D.C. 1956). Inspection of the briefs in the Court of Appeals shows the falsity of the assertion; see also the related *Bleecker Luncheonette* v. *Wagner*, 141 N.Y.S.2d 293 (Sup.Ct. 1955), aff'd 143 N.Y.S.2d 628 (App. Div. 1955).

(3) The assertion (p. 6) that petitioners' arguments have been rejected in virtually all of the eighty-plus prior cases in the urban renewal field. This is flagrantly untrue, as even the most superficial examination of these cases shows. The great majority stand only for what was established in *Berman v. Parker*, 348 U.S. 26 (1954): the basic constitutionality of slum clearance and the validity of the area approach, neither of which is challenged by petitioners. Barely half a dozen cases deal with claims under the Housing Act, and most of these are easily distinguishable. A few more deal with the right to a hearing, often in contexts very different from that at bar, since different states follow widely divergent procedures in designating urban renewal areas.

(4) The statement (p. 11 n.1) that petitioners' prayer for relief seeks to compel residential redevelopment of the proposed campus area. Petitioners flatly oppose clearance of two of the three tracts; even as to the one already largely cleared, petitioners seek to compel no action, only to forbid illegal action (A. 2095-97).

(5) The assertion (p. 17) that the undisputed facts show that the Housing Act was not violated. The "facts" referred to, highly disputed, are taken from affidavits and exhibits filed by one of the respondents in the district court, most of which are not even in the record before this Court. Although no motion for summary judgment was ever made and the requirements of F.R.C.P. Rule 56 were never met, these respondents seek to have their affidavits as to ultimate facts accepted in contradiction to the well-pleaded allegations of the Amended Complaint. The most that these affidavits actually show, moreover, is that the local agencies *represented* to the HHFA that the Housing Act requirements had been met—representations which petitioners have alleged were false.

CONCLUSION

For the reasons set forth here and in the Petition, this Court should grant the writ.

Respectfully submitted,

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